

MATERIALS MANAGEMENT ACQUISITION REGULATION

GPO PUBLICATION 805.33

**ISSUED MAY 15, 2003 BY THE
U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON, D.C.**

MATERIALS MANAGEMENT ACQUISITION REGULATIONS SYSTEM

Chapter 1

MATERIALS MANAGEMENT ACQUISITION REGULATION

FOREWORD

Acquisition by the U.S. Government Printing Office (GPO) is a complex operation requiring a high degree of specialization and knowledge. Those involved in acquisitions must be cognizant of a large number of highly technical rules and requirements. This Materials Management Acquisition Regulation (MMAR) provides the policies and procedures necessary to efficiently and effectively conduct GPO procurements. Acquisition in the Federal government is a dynamic process that must keep pace with frequently changing technologies, statutory requirements and national goals. This regulation is designed to assist and guide acquisition personnel.

MATERIALS MANAGEMENT ACQUISITION REGULATION

General Structure and Subparts

SUBCHAPTER A—GENERAL

PART 1—MATERIALS MANAGEMENT ACQUISITION REGULATIONS SYSTEM

- 1.1 Purpose, Authority, Issuance
- 1.2 [Reserved]
- 1.3 [Reserved]
- 1.4 Deviations from the MMAR
- 1.5 [Reserved]
- 1.6 Career Development, Contracting Authority, and Responsibilities
- 1.7 Determinations and Findings

PART 2—DEFINITIONS OF WORDS AND TERMS

- 2.1 Definitions
- 2.2 Definitions Clause

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

- 3.1 Safeguards
- 3.2 Contractor Gratuities to Government Personnel
- 3.3 Reports of Suspected Antitrust Violations
- 3.4 Contingent Fees
- 3.5 Other Improper Business Practices
- 3.6 Contracts with Government Employees or Organizations Owned or Controlled by Them
- 3.7 Voiding and Rescinding Contracts
- 3.8 [Reserved]
- 3.9 [Reserved]

PART 4—ADMINISTRATIVE MATTERS

- 4.1 Contract Execution
- 4.2 Contract Distribution
- 4.3 Paper Documents
- 4.4 Safeguarding Classified Information Within Industry
- 4.5 Electronic Commerce in Contracting
- 4.6 Contract Reporting
- 4.7 Contractor Records Retention
- 4.8 Government Contract Files
- 4.9 Taxpayer Identification Number Information
- 4.10 Contract Line Items
- 4.11 Contract Review Board

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 5—PUBLICIZING CONTRACT ACTIONS

- 5.1 Dissemination of Information
- 5.2 Synopses of Proposed Contract Actions
- 5.3 Synopses of Contract Awards
- 5.4 Release of Information
- 5.5 Paid Advertisements

PART 6—COMPETITION REQUIREMENTS

- 6.1 Full and Open Competition
- 6.2 Full and Open Competition After Exclusion of Sources
- 6.3 Other Than Full and Open Competition
- 6.4 Sealed Bidding and Competitive Proposals
- 6.5 [Reserved]

PART 7—ACQUISITION PLANNING

- 7.1 Acquisition Plans
- 7.2 Planning for the Purchase of Supplies in Economic Quantities
- 7.3 [Reserved]
- 7.4 Equipment Lease or Purchase
- 7.5 Inherently Governmental Functions

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

- 8.1 Excess Personal Property
- 8.2 [Reserved]
- 8.3 [Reserved]
- 8.4 Federal Supply Schedules
- 8.5 Acquisition of Helium
- 8.6 Acquisition from Federal Prison Industries, Inc.
- 8.7 Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled
- 8.8 Acquisition of Printing and Related Supplies
- 8.9 [Reserved]
- 8.10 [Reserved]
- 8.11 Leasing of Motor Vehicles

PART 9—CONTRACTOR QUALIFICATIONS

- 9.1 Responsible Prospective Contractors
- 9.2 Qualifications Requirements
- 9.3 First Article Testing and Approval
- 9.4 Debarment, Suspension, and Ineligibility
- 9.5 Organizational and Consultant Conflicts of Interest
- 9.6 Contractor Team Arrangements
- 9.7 [Reserved]

PART 10—MARKET RESEARCH**PART 11—DESCRIBING AGENCY NEEDS**

- 11.1 Selecting and Developing Requirements Documents
- 11.2 Using and Maintaining Requirements Documents
- 11.3 Acceptable Material
- 11.4 Delivery or Performance Schedules
- 11.5 Liquidated Damages
- 11.6 Priorities and Allocations
- 11.7 Variation in Quantity
- 11.8 Testing

PART 12—ACQUISITION OF COMMERCIAL ITEMS

- 12.1 Acquisition of Commercial Items—General
- 12.2 Special Requirements for the Acquisition of Commercial Items
- 12.3 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items
- 12.4 Unique Requirements Regarding Terms and Conditions for Commercial Items
- 12.5 [Reserved]
- 12.6 Streamlined Procedures for Evaluation and Solicitation for Commercial Items

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

- 13.1 Procedures
- 13.2 Actions At or Below the Micro-Purchase Threshold
- 13.3 Simplified Acquisition Methods
- 13.4 Fast Payment Procedure
- 13.5 [Reserved]

PART 14—SEALED BIDDING

- 14.1 Use of Sealed Bidding
- 14.2 Solicitation of Bids
- 14.3 Submission of Bids
- 14.4 Opening of Bids and Award of Contract
- 14.5 Two-Step Sealed Bidding

PART 15—CONTRACTING BY NEGOTIATION

- 15.1 Source Selection Processes and Techniques
- 15.2 Solicitation and Receipt of Proposals and Information
- 15.3 Source Selection
- 15.4 Contract Pricing
- 15.5 Preaward, Award, and Postaward Notifications, Protests, and Mistakes
- 15.6 Unsolicited Proposals

PART 16—TYPES OF CONTRACTS

- 16.1 Selecting Contract Types
- 16.2 Fixed-Price Contracts
- 16.3 Cost-Reimbursement Contracts
- 16.4 Incentive Contracts
- 16.5 Indefinite-Delivery Contracts
- 16.6 Time-and-Materials, Labor-Hour, and Letter Contracts
- 16.7 Agreements

PART 17—SPECIAL CONTRACTING METHODS

- 17.1 Multi-year Contracting
- 17.2 Options
- 17.3 [Reserved]
- 17.4 [Reserved]
- 17.5 Interagency Acquisitions Under the Economy Act
- 17.6 [Reserved]

PART 18—RESERVED

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 19—SMALL BUSINESS PROGRAMS

- 19.1 Size Standards
- 19.2 Policies
- 19.3 Reserved
- 19.4 [Reserved]
- 19.5 [Reserved]
- 19.6 [Reserved]
- 19.7 [Reserved]
- 19.8 [Reserved]
- 19.9 [Reserved]
- 19.10 [Reserved]
- 19.11 [Reserved]
- 19.12 [Reserved]
- 19.13 [Reserved]

PART 20—RESERVED

PART 21—RESERVED

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

- 22.1 Basic Labor Policies
- 22.2 Convict Labor
- 22.3 Contract Work Hours and Safety Standards Act
- 22.4 Labor Standards for Contracts Involving Construction
- 22.5 [Reserved]
- 22.6 Walsh-Healey Public Contracts Act
- 22.7 [Reserved]
- 22.8 Equal Employment Opportunity
- 22.9 Nondiscrimination Because of Age
- 22.10 Service Contract Act of 1965, as Amended
- 22.11 Professional Employee Compensation
- 22.12 [Reserved]
- 22.13 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
- 22.14 Employment of Workers with Disabilities
- 22.15 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

- 23.1 [Reserved]
- 23.2 Energy and Water Efficiency and Renewable Energy
- 23.3 Hazardous Material Identification and Material Safety Data
- 23.4 Use of Recovered Materials
- 23.5 [Reserved]
- 23.6 Notice of Radioactive Material
- 23.7 Contracting for Environmentally Preferable Products and Services
- 23.8 Ozone-Depleting Substances
- 23.9 Toxic Chemical Release Reporting
- 23.10 [Reserved]

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

- 24.1 [Reserved]
- 24.2 Freedom of Information Act

PART 25—FOREIGN ACQUISITION

- 25.1 Buy American Act—Supplies
- 25.2 Buy American Act—Construction Materials
- 25.3 [Reserved]
- 25.4 [Reserved]
- 25.5 Evaluating Foreign Offers—Supply Contracts
- 25.6 [Reserved]
- 25.7 Prohibited Sources
- 25.8 Other International Agreements and Coordination
- 25.9 Customs and Duties
- 25.10 Additional Foreign Acquisition Regulations
- 25.11 Solicitation Provisions and Contract Clauses

PART 26—OTHER SOCIOECONOMIC PROGRAMS

- 26.1 Indian Incentive Program
- 26.2 Disaster or Emergency Assistance Activities
- 26.3 [Reserved]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 27—PATENTS, DATA, AND COPYRIGHTS

- 27.1 General
- 27.2 Patents
- 27.3 Patent Rights under Government Contracts
- 27.4 Rights in Data and Copyrights
- 27.5 [Reserved]
- 27.6 Foreign License and Technical Assistance Agreements

PART 28—BONDS AND INSURANCE

- 28.1 Bonds and Other Financial Protections
- 28.2 Sureties and Other Security for Bonds
- 28.3 Insurance

PART 29—TAXES

- 29.1 General
- 29.2 Federal Excise Taxes
- 29.3 State and Local Taxes
- 29.4 Contract Clauses

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

- 30.1 General
- 30.2 CAS Program Requirements
- 30.3 CAS Rules and Regulations [Reserved]
- 30.4 Cost Accounting Standards [Reserved]
- 30.5 Cost Accounting Standards for Educational Institutions [Reserved]
- 30.6 CAS Administration

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

- 31.1 Applicability
- 31.2 Contracts with Commercial Organizations
- 31.3 Contracts with Educational Institutions
- 31.4 [Reserved]
- 31.5 [Reserved]
- 31.6 Contracts with State, Local, and Federally Recognized Indian Tribal Governments
- 31.7 Contracts with Nonprofit Organizations

PART 32—CONTRACT FINANCING

- 32.1 [Reserved]
- 32.2 [Reserved]
- 32.3 [Reserved]
- 32.4 Advance Payments for Non-Commercial Items
- 32.5 Progress Payments Based on Costs [Reserved]
- 32.6 Contract Debts
- 32.7 Contract Funding
- 32.8 Assignment of Claims
- 32.9 Prompt Payment
- 32.10 Performance-Based Payments
- 32.11 Electronic Funds Transfer

PART 33—PROTESTS, DISPUTES, AND APPEALS

- 33.1 Protests
- 33.2 Disputes and Appeals

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 34—MAJOR SYSTEM ACQUISITION

- 34.0 General
- 34.1 Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING**PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

- 36.1 General
- 36.2 Special Aspects of Contracting for Construction
- 36.3 Two-Phase Design-Build Selection Procedures
- 36.4 [Reserved]
- 36.5 Contract Clauses
- 36.6 Architect-Engineer Services
- 36.7 Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

PART 37—SERVICE CONTRACTING

- 37.1 Service Contracts—General
- 37.2 Advisory and Assistance Services
- 37.3 Dismantling, Demolition, or Removal of Improvements
- 37.4 Nonpersonal Health Care Services
- 37.5 Management Oversight of Service Contracts
- 37.6 Performance-Based Contracting

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

- 38.1 Federal Supply Schedule Program
- 38.2 Establishing and Administering Federal Supply Schedules

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

- 39.1 General
- 39.2 Electronic and Information Technology

PART 40—RESERVED**PART 41—ACQUISITION OF UTILITY SERVICES**

- 41.1 General
- 41.2 Acquiring Utility Services
- 41.3 Requests for Assistance
- 41.4 Administration
- 41.5 Solicitation Provision and Contract Clauses
- 41.6 Forms
- 41.7 Formats

SUBCHAPTER G—CONTRACT MANAGEMENT**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

- 42.1 Contract Audit Services
- 42.2 Contract Administration Services
- 42.3 Contract Administration Office Functions
- 42.4 Correspondence and Visits
- 42.5 Postaward Orientation
- 42.6 Corporate Administrative Contracting Officer
- 42.7 Indirect Cost Rates
- 42.8 Disallowance of Costs
- 42.9 Bankruptcy
- 42.10 [Reserved]
- 42.11 Production Surveillance and Reporting
- 42.12 Novation and Change-of-Name Agreements
- 42.13 Suspension of Work, Stop-Work Orders, and Government Delay of Work
- 42.14 Traffic and Transportation Management
- 42.15 Contractor Performance Information
- 42.16 Small Business Contract Administration
- 42.17 Forward Pricing Rate Agreements

PART 43—CONTRACT MODIFICATIONS

- 43.1 General
- 43.2 Change Orders
- 43.3 Forms

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

- 44.1 General
- 44.2 Consent to Subcontracts
- 44.3 Contractors' Purchasing Systems Reviews
- 44.4 Subcontracts for Commercial Items and Commercial Components

PART 45—GOVERNMENT PROPERTY

- 45.1 General
- 45.2 Competitive Advantage
- 45.3 Providing Government Property to Contractors
- 45.4 Contractor Use and Rental of Government Property
- 45.5 Management of Government Property in the Possession of Contractors
- 45.6 Reporting, Redistribution, and Disposal of Contractor Inventory

PART 46—QUALITY ASSURANCE

- 46.1 General
- 46.2 Contract Quality Requirements
- 46.3 Contract Clauses
- 46.4 Government Contract Quality Assurance
- 46.5 Acceptance
- 46.6 Material Inspection and Receiving Reports
- 46.7 Warranties
- 46.8 Contractor Liability for Loss of or Damage to Property of the Government

PART 47—TRANSPORTATION

- 47.1 General
- 47.2 Contracts for Transportation or for Transportation-Related Services
- 47.3 Transportation in Supply Contracts
- 47.4 Air Transportation by U.S.-Flag Carriers
- 47.5 Ocean Transportation by U.S.-Flag Vessels

PART 48—VALUE ENGINEERING

- 48.1 Policies and Procedures
- 48.2 Contract Clauses

PART 49—TERMINATION OF CONTRACTS

- 49.1 General Principles
- 49.2 Additional Principles for Fixed-Price Contracts Terminated for Convenience
- 49.3 Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience
- 49.4 Termination for Default
- 49.5 Contract Termination Clauses
- 49.6 Contract Termination Forms and Formats

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

- 50.1 General
- 50.2 Delegation of and Limitations on Exercise of Authority
- 50.3 Contract Adjustments
- 50.4 Residual Powers

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

- 51.1 Contractor Use of Government Supply Sources
- 51.2 Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

SUBCHAPTER H—CLAUSES AND FORMS**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

- 52.1 Instructions for Using Provisions and Clauses
- 52.2 Text of Provisions and Clauses
- 52.3 Provision and Clause Matrix

INDEX

**MATERIALS MANAGEMENT
ACQUISITION REGULATION**

SUBCHAPTER A—GENERAL

PART 1—MATERIALS MANAGEMENT ACQUISITION REGULATIONS SYSTEM

Sec.

<p>1.000 Scope of part.</p> <p style="padding-left: 40px;">Subpart 1.1—Purpose, Authority, Issuance</p> <p>1.101 Purpose.</p> <p>1.102 Statement of guiding principles for the Federal Acquisition System.</p> <p>1.102-1 Discussion.</p> <p>1.102-2 Performance standards.</p> <p>1.102-3 Acquisition Team.</p> <p>1.102-4 Role of the Acquisition Team.</p> <p>1.103 Authority.</p> <p>1.104 Applicability.</p> <p>1.105 Issuance.</p> <p>1.105-1 Publication and code arrangement.</p> <p>1.105-2 Arrangement of regulations.</p> <p>1.105-3 [Reserved]</p> <p>1.106 [Reserved]</p> <p>1.107 [Reserved]</p> <p>1.108 MMAR conventions.</p> <p style="text-align: center; padding-left: 80px;">Subpart 1.2—[Reserved]</p> <p style="text-align: center; padding-left: 80px;">Subpart 1.3—[Reserved]</p> <p style="padding-left: 40px;">Subpart 1.4—Deviations from the MMAR</p> <p>1.400 Scope of subpart.</p> <p>1.401 Definition.</p> <p>1.402 Policy.</p> <p>1.403 Individual deviations.</p>	<p>1.404 Class deviations.</p> <p>1.405 Deviations pertaining to treaties and executive agreements.</p> <p style="text-align: center; padding-left: 80px;">Subpart 1.5—[Reserved]</p> <p style="padding-left: 40px;">Subpart 1.6—Career Development, Contracting Authority, and Responsibilities</p> <p>1.601 General.</p> <p>1.602 Contracting officers.</p> <p>1.602-1 Authority.</p> <p>1.602-2 Responsibilities.</p> <p>1.602-3 Ratification of unauthorized commitments.</p> <p>1.603 Selection, appointment, and termination of appointment.</p> <p>1.603-1 [Reserved]</p> <p>1.603-2 Selection.</p> <p>1.603-3 Appointment.</p> <p>1.603-4 Termination.</p> <p style="padding-left: 40px;">Subpart 1.7—Determinations and Findings</p> <p>1.700 Scope of subpart.</p> <p>1.701 Definition.</p> <p>1.702 General.</p> <p>1.703 Class determinations and findings.</p> <p>1.704 Content.</p> <p>1.705 Supersession and modification.</p> <p>1.706 Expiration.</p> <p>1.707 Signatory authority.</p>
--	---

This page intentionally left blank.

1.000 Scope of part.

This part sets forth basic policies and general information about the Materials Management Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. Subparts 1.2, 1.3, and 1.4 prescribe administrative procedures for maintaining the MMAR System.

Subpart 1.1—Purpose, Authority, Issuance**1.101 Purpose.**

The Materials Management Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by Materials Management Service, U.S. Government Printing Office.

1.102 Statement of guiding principles for the Materials Management Acquisition System.

(a) The vision for the Materials Management Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Materials Management Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

(c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best interests

of the Government and is not addressed in the MMAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

1.102-1 Discussion.

(a) *Introduction.* The statement of Guiding Principles for the Materials Management Acquisition System (System) represents a concise statement designed to be user-friendly for all participants in Government acquisition. The following discussion of the principles is provided in order to illuminate the meaning of the terms and phrases used. The framework for the System includes the Guiding Principles for the System and the supporting policies and procedures in the MMAR.

(b) *Vision.* All participants in the System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system which works better and costs less.

1.102-2 Performance standards.

(a) *Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.* (1) The principal customers for the product or service provided by the System are the users and line managers, acting on behalf of the American taxpayer.

(2) The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality, and cost throughout the process, must take into account the perspective of the user of the product or service.

(3) When selecting contractors to provide products or perform services, the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform.

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

(5) It is the policy of the System to promote competition in the acquisition process.

(6) The System must perform in a timely, high quality, and cost-effective manner.

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order

to accommodate changing or unforeseen mission needs. Planning is a tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

(b) *Minimize administrative operating costs.* (1) In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

(c) *Conduct business with integrity, fairness, and openness.* (1) An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly, each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

(2) To achieve efficient operations, the System must shift its focus from "risk avoidance" to one of "risk management." The cost to the taxpayer of attempting to eliminate all risk is prohibitive.

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

(d) *Fulfill public policy objectives.* The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

1.102-3 Acquisition Team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of purpose, and open communication

among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

1.102-4 Role of the Acquisition Team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

(d) The System will foster cooperative relationships between the Government and its contractors consistent with its overriding responsibility to the taxpayers.

(e) The MMAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the MMAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

1.103 Authority.

(a) The development of the MMAR System is in accordance with the requirements of Title 44, U.S. Code.

(b) The MMAR is prepared, issued, and maintained by the Deputy Public Printer, U.S. Government Printing Office.

1.104 Applicability.

The MMAR applies to all acquisitions as defined in Part 2 of the MMAR, except where expressly excluded.

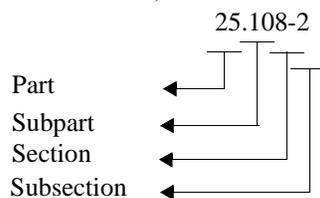
1.105 Issuance.**1.105-1 Publication and code arrangement.**

- (a) The MMAR is published
- (1) In a separate loose-leaf edition.
 - (2) On the GPO Intranet and at www.access.gpo.gov

1.105-2 Arrangement of regulations.

(a) *General.* The MMAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every MMAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a MMAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Materials Management Acquisition Regulation or the MMAR.

(3) Using the MMAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be “MMAR Part 9” outside the MMAR and “Part 9” within the MMAR.

(ii) Subpart would be “MMAR Subpart 9.1” outside the MMAR and “Subpart 9.1” within the MMAR.

(iii) Section would be “MMAR 9.106” outside the MMAR and “9.106” within the MMAR.

(iv) Subsection would be “MMAR 9.106-4” outside the MMAR and “9.106-4” within the MMAR.

(v) Paragraph would be “MMAR 9.106-4(d)” outside the MMAR and “9.106-4(d)” within the MMAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the MMAR shall follow the *Federal Register* form guides.

1.105-3 [Reserved]**1.106 [Reserved]****1.107 [Reserved]****1.108 MMAR conventions.**

The following conventions provide guidance for interpreting the MMAR:

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

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

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of MMAR changes to solicitations and contracts.* Unless otherwise specified—

(1) MMAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the MMAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the MMAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the Code of Federal Regulations, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

Subpart 1.2—[Reserved]

Subpart 1.3—[Reserved]

Subpart 1.4—Deviations from the MMAR

1.400 Scope of subpart.

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

1.401 Definition.

“Deviation” means any one or combination of the following:

- (a) The issuance or use of a policy, procedure, solicitation provision (see definition in 2.101), contract clause (see definition in 2.101), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the MMAR.
- (b) The omission of any solicitation provision or contract clause when its prescription requires its use.
- (c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the MMAR (see definition of “modification” in 52.101(a) and definition of “alternate” in 2.101(a)).
- (d) The use of a solicitation provision or contract clause prescribed by the MMAR on a “substantially as follows” or “substantially the same as” basis (see definitions in 2.101 and 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the MMAR.
- (e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the MMAR.
- (f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

1.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the MMAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of the GPO. The development and testing of new techniques and methods of acquisition should not be sti-

fled simply because such action would require a MMAR deviation. The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods. Refer to 31.101 for instructions concerning deviations pertaining to the subject matter of Part 31, Contract Cost Principles and Procedures. Deviations are not authorized with respect to 30.201-3 and 30.201-4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (MMAR Appendix)). Refer to 30.201-5 for instructions concerning waivers pertaining to Cost Accounting Standards.

1.403 Individual deviations.

Individual deviations affect only one contract action, and, unless 1.405(e) is applicable, may be authorized by the Director, Materials Management. The contracting officer must document the justification and approval in the contract file.

1.404 Class deviations.

Deviations may be authorized by the Public Printer or his designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity.

1.405 Deviations pertaining to treaties and executive agreements.

- (a) “Executive agreements,” as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.
- (b) Any deviation from the MMAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with MMAR coverage based on a law enacted after the execution of the treaty.
- (c) Any deviation from the MMAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with MMAR coverage based on law.

Subpart 1.5—[Reserved]

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the Public Printer. The Public Printer may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

1.602 Contracting officers.

1.602-1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

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

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) Definitions.

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

“Unauthorized commitment,” as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) MMS should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the Director, Materials Management, may ratify an unauthorized commitment.

(3) The ratification authority in paragraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of Director, Materials Management.

(4) Contracting Officers should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602-3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Disputes Clause should be processed in accordance with Subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in paragraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official has the authority to enter into a contractual commitment;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by MMAR Part 50. Legal advice should be obtained in these cases.

1.603 Selection, appointment, and termination of appointment.**1.603-1 [Reserved]****1.603-2 Selection**

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

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

1.603-3 Appointment.

(a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) The Public Printer may delegate micro-purchase authority to individuals who are employees of an executive agency or members of GPO who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

1.603-4 Termination.

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

Subpart 1.7—Determinations and Findings

1.700 Scope of subpart.

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

1.701 Definition.

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

1.702 General.

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

(b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

(a) A class D&F provides authority for a class of contract actions. A class may consist of contract actions for the same or related supplies or services or other contract actions that require essentially identical justification.

(b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.

(c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

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

(a) Identification of the agency and of the contracting activity and specific identification of the document as a “Determination and Findings.”

(b) Nature and/or description of the action being approved.

(c) Citation of the appropriate statute and/or regulation upon which the D&F is based.

(d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.

(e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.

(f) Expiration date of the D&F, if required (see 1.706).

(g) The signature of the official authorized to sign the D&F (see 1.707) and the date signed.

1.705 Supersession and modification.

(a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.

(b) The contracting officer need not cancel the solicitation if the D&F, as modified, supports the contract action.

1.706 Expiration.

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

1.707 Signatory authority.

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

* * * * *

PART 2—DEFINITIONS OF WORDS AND TERMS

<i>Sec.</i>			
2.000	Scope of part.		Subpart 2.2—Definitions Clause
	Subpart 2.1—Definitions	2.201	Contract clause.
2.101	Definitions.		

This page intentionally left blank.

2.000 Scope of part.

(a) This part—

(1) Defines words and terms that are frequently used in the MMAR;

(2) Provides cross-references to other definitions in the MMAR of the same word or term; and

(3) Provides for the incorporation of these definitions in solicitations and contracts by reference.

(b) Other parts, subparts, and sections of the MMAR may define other words or terms and those definitions only apply to the part, subpart, or section where the word or term is defined (see the Index for locations).

Subpart 2.1—Definitions**2.101 Definitions.**

(a) A word or a term, defined in this section, has the same meaning throughout MMAR unless—

(1) The context in which the word or term is used clearly requires a different meaning; or

(2) Another MMAR part, subpart, or section provides a different definition for the particular part or portion of the part.

(b) If a word or term that is defined in this section is defined differently in another part, subpart, or section of the MMAR, the definition in—

(1) This section includes a cross-reference to the other definitions; and

(2) That part, subpart, or section applies to the word or term when used in that part, subpart, or section.

“Acquisition” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

“Acquisition planning” means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.

“Adequate evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Advisory and assistance services” means those services provided under contract by nongovernmental sources to support or improve: organizational policy development; deci-

sion-making; management and administration; program and/or project management and administration; or R&D activities. It can also mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering and technical nature). In rendering the foregoing services, outputs may take the form of information, advice, opinions, alternatives, analyses, evaluations, recommendations, training and the day-to-day aid of support personnel needed for the successful performance of ongoing Federal operations. All advisory and assistance services are classified in one of the following definitional subdivisions:

(1) Management and professional support services, *i.e.*, contractual services that provide assistance, advice or training for the efficient and effective management and operation of organizations, activities (including management and support services for R&D activities), or systems. These services are normally closely related to the basic responsibilities and mission of the agency originating the requirement for the acquisition of services by contract. Included are efforts that support or contribute to improved organization of program management, logistics management, project monitoring and reporting, data collection, budgeting, accounting, performance auditing, and administrative technical support for conferences and training programs.

(2) Studies, analyses and evaluations, *i.e.*, contracted services that provide organized, analytical assessments/evaluations in support of policy development, decision-making, management, or administration. Included are studies in support of R&D activities. Also included are acquisitions of models, methodologies, and related software supporting studies, analyses or evaluations.

(3) Engineering and technical services, *i.e.*, contractual services used to support the program office during the acquisition cycle by providing such services as systems engineering and technical direction (see 9.505-1(b)).

“Affiliates” means associated business concerns or individuals if, directly or indirectly—

(1) Either one controls or can control the other; or

(2) A third party controls or can control both.

“Agency” means the United States Government Printing Office.

“Agency head” or “head of the agency” means the Public Printer unless otherwise indicated.

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

“Architect-engineer services,” as defined in 40 U.S.C. 541, means—

(1) Professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered, or certified to provide those services;

(2) Professional services of an architectural or engineering nature performed by contract that are associated with research, planning, development, design, construction, alteration, or repair of real property; and

(3) Those other professional services of an architectural or engineering nature, or incidental services, that members of the architectural and engineering professions (and individuals in their employ) may logically or justifiably perform, including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, and other related services.

“Assignment of claims” means the transfer or making over by the contractor to a bank, trust company, or other financing institution, as security for a loan to the contractor, of its right to be paid by the Government for contract performance.

“Basic research” means that research directed toward increasing knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application of that knowledge.

“Best value” means the expected outcome of an acquisition that, in the Government’s estimation, provides the greatest overall benefit in response to the requirement.

“Bid sample” means a product sample required to be submitted by an offeror to show characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the solicitation (*e.g.*, balance, facility of use, or pattern).

“Broad agency announcement” means a general announcement of an agency’s research interest including criteria for selecting proposals and soliciting the participation of all offerors capable of satisfying the Government’s needs (see 6.102(d)(2)).

“Bundled contract” means a contract where the requirements have been consolidated by bundling. (See the definition of bundling.)

“Bundling” means—

(1) Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to—

(i) The diversity, size, or specialized nature of the elements of the performance specified;

(ii) The aggregate dollar value of the anticipated award;

(iii) The geographical dispersion of the contract performance sites; or

(iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.

(2) “Separate smaller contract” as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns.

(3) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

“Business unit” means any segment of an organization, or an entire business organization that is not divided into segments.

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

“Change order” means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor’s consent.

“Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

“Classified acquisition” means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

“Classified contract” means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

“Classified information” means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

“Cognizant Federal agency” means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

“Commerce Business Daily (CBD)” means the publication of the Secretary of Commerce used to fulfill statutory requirements to publish certain public notices in paper form.

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

“Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

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

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

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

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

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

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

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

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

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

(i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the off-ers.

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

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

“Component” means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) Part 25, see the definition in 25.003;

(2) 52.225-1 and 52.225-3, see the definition in 52.225-1(a) and 52.225-3(a); and

(3) 52.225-9 and 52.225-11, see the definition in 52.225-9(a) and 52.225-11(a).

“Computer software” means computer programs, computer databases, and related documentation.

“Consent to subcontract” means the contracting officer’s written consent for the prime contractor to enter into a particular subcontract.

“Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties,

breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

“Continued portion of the contract” means the portion of a contract that the contractor must continue to perform following a partial termination.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301, *et seq.* For discussion of various types of contracts, see Part 16.

“Contract administration office” means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

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

“Contract modification” means any written change in the terms of a contract (see 43.103).

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

“Contracting activity” means an element of the GPO designated by the Public Printer and delegated broad authority regarding acquisition functions.

“Contracting office” means an office that awards or executes a contract for supplies or services and performs postaward functions not assigned to a contract administration office (except for use in Part 48, see also 48.001).

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)”

refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in the MMAR to administrative contracting officer or termination contracting officer does not—

(1) Require that a duty be performed at a particular office or activity; or

(2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*. For use in Subpart 23.5, see the definition at 23.503.

“Cost or pricing data” (10 U.S.C. 2306a(h)(1) and 41 U.S.C. 254b) means all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406-2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as—

(1) Vendor quotations;

(2) Nonrecurring costs;

(3) Information on changes in production methods and in production or purchasing volume;

(4) Data supporting projections of business prospects and objectives and related operations costs;

(5) Unit-cost trends such as those associated with labor efficiency;

(6) Make-or-buy decisions;

(7) Estimated resources to attain business goals; and

(8) Information on management decisions that could have a significant bearing on costs.

“Cost realism” means that the costs in an offeror’s proposal—

(1) Are realistic for the work to be performed;

(2) Reflect a clear understanding of the requirements; and

(3) Are consistent with the various elements of the offeror’s technical proposal.

“Cost sharing” means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

“Day” means, unless otherwise specified, a calendar day.

“Debarment” means action taken by a debarring official under GPO Instruction 110.11B to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

“Delivery order” means an order for supplies placed against an established contract or with Government sources.

“Descriptive literature” means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product’s characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

“Design-to-cost” means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

“Drug-free workplace” means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Effective date of termination” means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

“Electronic and information technology (EIT)” has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

“Electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

“Electronic data interchange (EDI)” means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

“Electronic Funds Transfer (EFT)” means any transfer of funds, other than a transaction originated by cash, check, or

similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with 31 U.S.C. 3332 and implementing regulations at 31 CFR part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

“End product” means supplies delivered under a line item of a Government contract, except for use in Part 25 and the associated clauses at 52.225-1, 52.225-3, and 52.225-5, see the definitions in 25.003, 52.225-1(a), 52.225-3(a), and 52.225-5(a).

“Energy-efficient product” means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

“Energy-savings performance contract” means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

“Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

“Executive agency” means an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101.

“Facsimile” means electronic equipment that communicates and reproduces both printed and handwritten material. If used in conjunction with a reference to a document; *e.g.*,

facsimile bid, the terms refers to a document (in the example given, a bid) that has been transmitted to and received by the Government via facsimile.

“Federal Acquisition Computer Network (FACNET) Architecture” is a Government system that provides user access, employs nationally and internationally recognized data formats, and allows the electronic data interchange of acquisition information between the private sector and the Federal Government.

“Federal agency” means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

“Federally Funded Research and Development Centers (FFRDC’s)” means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

- (1) A long-term relationship is contemplated;
- (2) Most or all of the facilities are owned or funded by the Government; and
- (3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

“Final indirect cost rate” means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor’s fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

“First article” means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

“First article testing” means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

“F.o.b.” means free on board. This term is used in conjunction with a physical point to determine—

- (1) The responsibility and basis for payment of freight charges; and
- (2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

“F.o.b. destination” means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for

the cost of shipping and risk of loss. For use in the clause at 52.247-34, see the definition at 52.247-34(a).

“F.o.b. origin” means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at 52.247-29, see the definition at 52.247-29(a).

“F.o.b.”... (For other types of F.o.b., see 47.303).

“Forward pricing rate agreement” means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

“Forward pricing rate recommendation” means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

“Freight” means supplies, goods, and transportable property.

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

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

“Governmentwide acquisition contract (GWAC)” means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to section 5112(e) of the Clinger-Cohen Act, 40 U.S.C. 1412(e); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by the Brooks Act, 40 U.S.C. 759 (repealed by Pub. L. 104-106).

The Economy Act does not apply to orders under a Governmentwide acquisition contract.

“Governmentwide point of entry (GPE)” means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

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

“Indirect cost” means any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than the MMAR and its implementing and supplementing regulations; for example, pursuant to the Davis-Bacon Act and its related statutes and implementing regulations, the Service Contract Act, the Equal Employment Opportunity Acts and Executive orders, the Walsh-Healey Public Contracts Act, the Buy American Act, or the Environmental Protection Acts and Executive orders.

“Information other than cost or pricing data” means any type of information that is not required to be certified in accordance with 15.406-2 and is necessary to determine price reasonableness or cost realism. For example, such information may include pricing, sales, or cost information, and includes cost or pricing data for which certification is determined inapplicable after submission.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, manipulation,

management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services. The list of commercial activities included in the attachment to Office of Management and Budget (OMB) Circular No. A-76 is an authoritative, nonexclusive list of functions that are not inherently governmental functions.

“Inspection” means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

“Insurance” means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

“Invoice” means a contractor’s bill or written request for payment under the contract for supplies delivered or services performed (see also “proper invoice”).

“Irrevocable letter of credit” means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government’s (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR part 654, subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

“Latent defect” means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

“List of Parties Excluded from Federal Procurement and Nonprocurement Programs” means a list compiled, main-

tained, and distributed by the General Services Administration containing the names and other information about parties debarred, suspended, or voluntarily excluded under the Nonprocurement Common Rule or the Federal Acquisition Regulation, parties who have been proposed for debarment under the Federal Acquisition Regulation, and parties determined to be ineligible.

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars) or the eventual total expenditure for the acquisition exceeds \$540,000,000 (based on fiscal year 1990 constant dollars);

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

(3) The system is designated a “major system” by the head of the agency responsible for the system (10 U.S.C. 2302 and 41 U.S.C. 403).

“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

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

“Master solicitation” means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

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

“Micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

“Micro-purchase threshold” means \$2,500, except it means—

(1) \$2,000 for construction subject to the Davis-Bacon Act; and

(2) \$15,000 for acquisitions by or for the Department of Defense facilitating the defense against terrorism or biological or chemical attack as described in 13.201(g), except for construction subject to the Davis-Bacon Act.

“Minority Institution” means an institution of higher education meeting the requirements of Section 1046(3) of the Higher Education Act of 1965 (20 U.S.C. 1067k), including a Hispanic-serving institution of higher education, as defined in Section 316(b)(1) of the Act (20 U.S.C. 1101a).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see 17.500(b)). Multi-agency contracts include contracts for information technology established pursuant to section 5124(a)(2) of the Clinger-Cohen Act, 40 U.S.C. 1424(a)(2).

“Must” (see “shall”).

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

“Neutral person” means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve (5 U.S.C. 583).

“Nondevelopmental item” means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

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

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

“Novation agreement” means a legal instrument—

(1) Executed by the—

- (i) Contractor (transferor);
- (ii) Successor in interest (transferee); and
- (iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see Subpart 15.6.

“Offeror” means offeror or bidder.

“Option” means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

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

“Overtime” means time worked by a contractor’s employee in excess of the employee’s normal workweek.

“Overtime premium” means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.

“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

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

“Performance-based contracting” means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes as opposed to either the manner by which the work is to be performed or broad and imprecise statements of work.

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see 37.104).

“Pollution prevention” means any practice that—

(1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and

(ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;

(2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or

(3) Protects natural resources by conservation.

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

“Power of attorney” means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at 28.001).

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Procurement” (see “acquisition”).

“Procuring activity” means a component of the GPO having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

“Projected average loss” means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

“Proper invoice” means an invoice that meets the minimum standards specified in 32.905(b).

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

“Qualification requirement” means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

“Qualified products list (QPL)” means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

“Receiving report” means written evidence that indicates Government acceptance of supplies delivered or services

performed (see Subpart 46.6). Receiving reports must meet the requirements of 32.905(c).

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in Subpart 11.3 for paper and paper products, see the definition at 11.301.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

“Renewable energy technology” means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

“Residual value” means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Responsible audit agency” means the agency that is responsible for performing all required contract audit services at a business unit.

“Responsible prospective contractor” means a contractor that meets the standards in 9.104.

“Segment” means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

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

(1) Means a small business concern—

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

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

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

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

“Shop drawings” means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

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

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

“Simplified acquisition threshold” means \$100,000. 44 U.S.C. 311(c).

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR part 121 (see 19.102) for the product or service it is providing on the subcontract.

“Small disadvantaged business concern” (except for 52.212-3(c)(2) and 52.219-1(b)(2) for general statistical purposes and 52.212-3(c)(7)(ii), 52.219-22(b)(2), and 52.219-23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and

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

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

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

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

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

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

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

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See MMAR 2.101 and 3.104” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

“State and local taxes” means taxes levied by the States, the District of Columbia, Puerto Rico, possessions of the United States, or their political subdivisions.

“Substantial evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the MMAR provision or clause, and is not inconsistent with the intent, principle, and substance of the MMAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

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

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Suspension” means action taken by a suspending official under GPO Instruction 110.11B, to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

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

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

(1) In the opinion of and to the knowledge of the Government evaluator, the meritorious proposal—

(i) Is the product of original thinking submitted confidentially by one source;

(ii) Contains new, novel, or changed concepts, approaches, or methods;

(iii) Was not submitted previously by another; and

(iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in Subpart 22.8, see the definition at 22.801.

(2) For use in Subpart 22.10, see the definition at 22.1001.

(3) For use in Subpart 22.13, see the definition at 22.1301.

(4) For use in Part 25, see the definition at 25.003.

(5) For use in Subpart 47.4, see the definition at 47.401.

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs (Section 36 of the Office of Federal Procurement Policy Act, 41 U.S.C. 401, *et seq.*). For use in the clause at 52.248-2, see the definition at 52.248-2(b).

“Value engineering change proposal (VECP)”—

(1) Means a proposal that—

(i) Requires a change to the instant contract to implement; and

(ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—

(A) In deliverable end item quantities only;

(B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

(i) 52.248-2, see the definition at 52.248-2(b); and

(ii) 52.248-3, see the definition at 52.248-3(b).

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

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

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

“Virgin material” means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

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

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

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

“Writing” or “written” (see “in writing”).

Subpart 2.2—Definitions Clause

2.201 Contract clause.

Insert the clause at 52.202-1, Definitions, in solicitations and contracts that exceed the simplified acquisition thresh-

old. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, use the clause with its Alternate I. The contracting officer may include additional definitions, provided they are consistent with the clause and the MMAR.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Sec.

3.000	Scope of part.		
	Subpart 3.1—Safeguards		Subpart 3.4—Contingent Fees
3.101	Standards of conduct.	3.400	Scope of subpart.
3.101-1	General.	3.401	Definitions.
3.101-2	Solicitation and acceptance of gratuities by Government personnel.	3.402	Statutory requirements.
3.101-3	Agency regulations.	3.403	Applicability.
3.102	[Reserved]	3.404	Contract clause.
3.103	Independent pricing.	3.405	Misrepresentations or violations of the Covenant Against Contingent Fees.
3.103-1	Solicitation provision.	3.406	Records.
3.103-2	Evaluating the certification.		Subpart 3.5—Other Improper Business Practices
3.103-3	The need for further certifications.	3.501	Buying-in.
3.104	Procurement integrity.	3.501-1	Definition.
3.104-1	Definitions.	3.501-2	General.
3.104-2	General.	3.502	Subcontractor kickbacks.
3.104-3	Statutory and related prohibitions, restrictions, and requirements.	3.502-1	Definitions.
3.104-4	Disclosure, protection, and marking of contractor bid or proposal information and source selection information.	3.502-2	Subcontractor kickbacks.
3.104-5	Disqualification.	3.502-3	Contract clause.
3.104-6	Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.	3.503	Unreasonable restrictions on subcontractor sales.
3.104-7	Violations or possible violations.	3.503-1	Policy.
3.104-8	Criminal and civil penalties, and further administrative remedies.	3.503-2	Contract clause.
3.104-9	Contract clauses.		Subpart 3.6—Contracts with Government Employees or Organizations Owned or Controlled by Them
	Subpart 3.2—Contractor Gratuities to Government Personnel	3.601	Policy.
3.201	Applicability.	3.602	Exceptions.
3.202	Contract clause.	3.603	Responsibilities of the contracting officer.
3.203	Reporting suspected violations of the Gratuities clause.		Subpart 3.7—Voiding and Rescinding Contracts
3.204	Treatment of violations.	3.700	Scope of subpart.
	Subpart 3.3—Reports of Suspected Antitrust Violations	3.701	Purpose.
3.301	General.	3.702	Definition.
3.302	Definitions.	3.703	Authority.
3.303	Reporting suspected antitrust violations.	3.704	Policy.
		3.705	Procedures.
			Subpart 3.8—[Reserved]
			Subpart 3.9—[Reserved]

This page intentionally left blank.

3.000 Scope of part.

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

Subpart 3.1—Safeguards**3.101 Standards of conduct.****3.101-1 General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

3.101-2 Solicitation and acceptance of gratuities by Government personnel.

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in GPO Instruction 655.3A.

3.101-3 Agency regulations.

(a) GPO policies are contained in GPO Instruction 655.3A.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended 18 U.S.C. 207.

3.102 [Reserved]**3.103 Independent pricing.****3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at 52.203-2, Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price

contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the simplified acquisition procedures in Part 13;

(b) [Reserved]

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

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

3.103-2 Evaluating the certification.

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes “disclosure” as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified paragraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting competition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with 3.303.

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

3.104 Procurement integrity.

3.104-1 Definitions.

As used in this section—

“Agency ethics official” means the GPO’s ethics officer described in GPO Notice 105-43 or other designated person.

“Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

“Contractor bid or proposal information” means any of the following information submitted to the agency as part of or in connection with a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data as defined by section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215-1(e).

“Decision to award a subcontract or modification of subcontract” means a decision to designate award to a particular source.

“Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal

sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

“In excess of \$10,000,000” means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means—

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

“Participating personally and substantially in a Federal agency procurement” means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) “Participating personally” means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) “Participating substantially” means that the official’s involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approv-

ing or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(iii) Clerical functions supporting the conduct of a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

“Source selection evaluation board” means any board, team, council, or other group that evaluates bids or proposals.

3.104-2 General.

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. 423) referred to as “the Act”). Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104-3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and GPO Instruction 655.3A;

(2) Contacts with an offeror during the conduct of an acquisition may constitute “seeking employment,” (see 3.104-3(c)(2)). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 from participating personally and substantially in any particular matter

that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with GPO Instruction 655.3A. The statutory prohibition in 18 U.S.C. 208 also may require an employee’s disqualification from participation in the acquisition even if the employee’s duties may not be considered “participating personally and substantially,” as this term is defined in 3.104-1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee’s official responsibility;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905;

(5) Release of information both before and after award (see 3.104-4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee’s private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by GPO Instruction 655.3A.

3.104-3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104-4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the

award of a Federal agency procurement contract to which the information relates.

(c) *Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).* (1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104-5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as “seeking employment” in 5 CFR 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.

(3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See 3.104-2(b)(2).

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the contractor within a period of 1 year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the “source selection information” definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend “*Source Selection Information—See MMAR 2.101 and 3.104.*” Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information

whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with 52.215-1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104-2(b)(5) and Subpart 24.2.)

3.104-5 Disqualification.

(a) *Contacts through agents or other intermediaries.* Employment contacts between the employee and the offeror, that are conducted through agents, or other intermediaries, may require disqualification under 3.104-3(c)(1). These contacts may also require disqualification under other statutes and regulations. (See 3.104-2(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104-3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104-3(c)(1)(ii) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with 3.104-3(c)(1)(ii).

(2) After the conditions of 3.104-3(c)(1)(ii)(A) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of GPO Instruction 655.3A regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of

someone with whom the individual is seeking employment, unless the individual receives a waiver pursuant to GPO Instruction 655.3A; or an authorization in accordance with the requirements of GPO Instruction 655.3A.

3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104-3(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under 3.104-3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the

Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104-7 Violations or possible violations.

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104-3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act, for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

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

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

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

(B) The agency head 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 subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to

award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer.

3.104-8 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates the Act (see 3.104-3). See 33.102(f) for special rules regarding bid protests. See 3.104-7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104-3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104-3, knowing that the official has not complied with 3.104-3(c)(1), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104-5) may be subject to agency administrative actions under GPO Instruction 655.3A if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104-9 Contract clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at—

(a) 52.203-8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity.

Subpart 3.2—Contractor Gratuities to Government Personnel

3.201 Applicability.

This subpart applies to all Materials Management components.

3.202 Contract clause.

The contracting officer shall insert the clause at 52.203-3, Gratuities, in solicitations and contracts with a value exceeding the simplified acquisition threshold.

3.203 Reporting suspected violations of the Gratuities clause.

Agency personnel shall report suspected violations of the Gratuities clause to the contracting officer or other designated official in accordance with agency procedures. The agency reporting procedures shall be published as an implementation of this section 3.203 and shall clearly specify—

- (a) What to report and how to report it; and
- (b) The channels through which reports must pass, including the function and authority of each official designated to review them.

3.204 Treatment of violations.

(a) Before taking any action against a contractor, the agency head or a designee shall determine, after notice and hearing under agency procedures, whether the contractor, its agent, or another representative, under a contract containing the Gratuities clause—

(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 (intent generally must be inferred).

(b) Agency procedures shall afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents. The procedures should be as informal as practicable, consistent with principles of fundamental fairness.

(c) When the agency head or designee determines that a violation has occurred, the Government may—

- (1) Terminate the contractor's right to proceed;
- (2) Initiate debarment or suspension measures as set forth in Subpart 9.4.

Subpart 3.3—Reports of Suspected Antitrust Violations

3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions for possible referral to—

- (1) The Attorney General under 3.303; and
- (2) The agency office responsible for contractor debarment and suspension under Subpart 9.4.

3.302 Definitions.

As used in this subpart—

“Identical bids” means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (*e.g.*, discount or transportation cost).

“Line item” means an item of supply or service, specified in a solicitation, that the offeror must separately price.

3.303 Reporting suspected antitrust violations.

(a) MMS is required to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by Subpart 9.4.

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) of this section identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include—

- (1) The existence of an “industry price list” or “price agreement” to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader pricing;

(4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts let by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) For offers from foreign contractors for contracts to be performed outside the United States, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports shall be addressed to the—

Attorney General
 U.S. Department of Justice
 Washington DC 20530
 Attention: Assistant Attorney General
 Antitrust Division

and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

Subpart 3.4—Contingent Fees

3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts.

3.401 Definitions.

As used in this subpart—

“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.

3.402 Statutory requirements.

Contractors’ arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. In 10 U.S.C. 2306(b) and 41 U.S.C. 254(a), Congress affirmed this public policy but permitted certain exceptions. These statutes—

- (a) Require in every negotiated contract a warranty by the contractor against contingent fees;
- (b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and
- (c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract with-

out liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

3.404 Contract clause.

The contracting officer shall insert the clause at 52.203-5, Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see Parts 2 and 12).

3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

- (1) If before award, reject the bid or proposal.
- (2) If after award, enforce the Government’s right to annul the contract or to recover the fee.
- (3) Initiate suspension or debarment action under Subpart 9.4.
- (4) Refer suspected fraudulent or criminal matters to the Department of Justice.

3.406 Records.

For enforcement purposes, agencies shall preserve any specific evidence of one or more of the violations in 3.405(a), together with all other pertinent data, including a record of actions taken. Contracting offices shall not retire or destroy these records until it is certain that they are no longer needed for enforcement purposes. If the original record is maintained in a central file, a copy must be retained in the contract file.

Subpart 3.5—Other Improper Business Practices

3.501 Buying-in.

3.501-1 Definition.

“Buying-in,” as used in this section, means submitting an offer below anticipated costs, expecting to—

- (1) Increase the contract amount after award (*e.g.*, through unnecessary or excessively priced change orders); or
- (2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

3.501-2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of—

- (1) Change orders; or
- (2) Follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

- (1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multi-year quantity; or
- (2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see Subpart 17.2).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (*e.g.*, amortization of nonrecurring costs (see 15.408, Table 15-2, paragraph A, column (2) under “Formats for Submission of Line Item Summaries”) and treatment of unreasonable price quotations (see 15.405).

3.502 Subcontractor kickbacks.

3.502-1 Definitions.

As used in this section—

“Kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

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

“Prime contract” 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” means a person who has entered into a prime contract with the United States.

“Prime Contractor employee” means any officer, partner, employee, or agent of a prime contractor.

“Subcontract” 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” (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.

3.502-2 Subcontractor kickbacks.

The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Act—

(a) Prohibits any person from—

(1) Providing, 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 subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this subsection.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that—

(1) The contracting officer may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against the prime contractor under paragraph (d)(1) of this subsection; and

(3) An offset under paragraph (d)(1) or a direction under paragraph (d)(2) of this subsection is a claim by the Government for the purposes of the Contract Disputes Act of 1978.

(e) Authorizes contracting officers to order that sums withheld under paragraph (d)(2) of this subsection be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that it be retained by the prime contractor.

(f) Requires the prime contractor to notify the contracting officer when the withholding under paragraph (d)(2) of this subsection has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice any possible violation of the Act when the prime contractor or subcontractor has reasonable grounds to believe such violation may have occurred.

(h) Provides that, for the purpose of ascertaining whether there has been a violation of the Act with respect to any prime contract, the General Accounting Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

(i) Requires each contracting agency to include in each prime contract exceeding \$100,000 for other than commercial items (see Part 12), a requirement that the prime contractor shall—

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (*e.g.*, company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about

kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Act.

(j) Notwithstanding paragraph (i) of this subsection, a prime contractor shall cooperate fully with any Federal government agency investigating a violation of Section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51-58).

3.502-3 Contract clause.

The contracting officer shall insert the clause at 52.203-7, Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see Part 12).

3.503 Unreasonable restrictions on subcontractor sales.

3.503-1 Policy.

Government policy requires that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

3.503-2 Contract clause.

The contracting officer shall insert the clause at 52.203-6, Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

Subpart 3.6—Contracts with Government Employees or Organizations Owned or Controlled by Them

3.601 Policy.

(a) Except as specified in 3.602, a contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employees' interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.

(b) For purposes of this subpart, special Government employees (as defined in 18 U.S.C. 202) performing services as experts, advisors, or consultants, or as members of advisory committees, are not considered Government employees unless—

(1) The contract arises directly out of the individual's activity as a special Government employee;

(2) In the individual's capacity as a special Government employee, the individual is in a position to influence the award of the contract; or

(3) Another conflict of interest is determined to exist.

3.602 Exceptions.

The agency head, or a designee not below the level of the head of the contracting activity, may authorize an exception to the policy in 3.601 only if there is a most compelling reason to do so, such as when the Government's needs cannot reasonably be otherwise met.

3.603 Responsibilities of the contracting officer.

(a) Before awarding a contract, the contracting officer shall obtain an authorization under 3.602 if—

(1) The contracting officer knows, or has reason to believe, that a prospective contractor is one to which award is otherwise prohibited under 3.601; and

(2) There is a most compelling reason to make an award to that prospective contractor.

(b) The contracting officer shall comply with the requirements and guidance in Subpart 9.5 before awarding a contract to an organization owned or substantially owned or controlled by Government employees.

Subpart 3.7—Voiding and Rescinding Contracts

3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which—

(1) There has been a final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

(b) This subpart does not prescribe policies or procedures for, or govern the exercise of, any other remedy available to the Government with respect to such contracts, including but not limited to, the common law right of avoidance, rescission, or cancellation.

3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

3.702 Definition.

“Final conviction” means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

3.703 Authority.

(a) Section 1(e) of Public Law 87-849, 18 U.S.C. 218 (“the Act”), empowers the President or the heads of execu-

tive agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code (18 U.S.C. 201-224). Executive Order 12448, November 4, 1983, delegates the President’s authority under the Act to the heads of the executive agencies and military departments.

(b) Subsection 27(e)(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the OFPP Act), as amended, requires a Federal agency, upon receiving information that a contractor or a person has engaged in conduct constituting a violation of subsection 27(a) or (b) of the OFPP Act, to consider rescission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under subsection 27(e)(1) of the OFPP Act; or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

3.704 Policy.

(a) In cases in which there is a final conviction for any violation of 18 U.S.C. 201-224 involving or relating to contracts awarded by an agency, the agency head or designee, shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under 18 U.S.C. 201-224 relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with Subpart 9.4, Debarment, Suspension, and Ineligibility, if debarment has not been initiated, or is not in effect at the time the final conviction is entered.

(c) If there is a final conviction for an offense punishable under subsection 27(e) of the OFPP Act, or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at 3.705 (see 3.104-7); and

(2) Recommending the initiation of suspension or debarment proceedings in accordance with Subpart 9.4.

3.705 Procedures.

(a) *Reporting.* The facts concerning any final conviction for any violation of 18 U.S.C. 201-224 involving or relating to agency contracts shall be reported promptly to the agency head or designee for that official's consideration. The agency head or designee shall promptly notify the Civil Division, Department of Justice, that the action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-making process.* Agency procedures governing the voiding and rescinding decision-making process shall be as informal as practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies shall provide the following:

(1) A notice of proposed action to declare void and rescind the contract shall be made in writing and sent by certified mail, return receipt requested.

(2) A thirty calendar day period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity shall be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry shall be made regarding the validity of a conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official shall issue a written decision which—

(i) States that determination;

(ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and

(iii) States the amount due and the property to be returned to the agency.

(d) *Notice of proposed action.* The notice of proposed action, as a minimum shall—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and recovering the amounts expended and property transferred therefor, under the provisions of 18 U.S.C. 218;

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the offense or final conviction on which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final agency decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of the Disputes Clause 52.233-1. Therefore, the procedures required by the Disputes Clause and the MMAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

Subpart 3.8—[Reserved]

Subpart 3.9—[Reserved]

* * * * *

FAC 2001–10 DECEMBER 23, 2002

PART 4—ADMINISTRATIVE MATTERS

Sec.

- 4.000 Scope of part.
 - Subpart 4.1—Contract Execution**
 - 4.101 Contracting officer’s signature.
 - 4.102 Contractor’s signature.
 - 4.103 Contract clause.
 - 4.104 JCP Approval Requirement.
 - Subpart 4.2—Contract Distribution**
 - 4.201 Procedures.
 - 4.202 Distribution requirements.
 - 4.203 Taxpayer identification information.
 - Subpart 4.3—Paper Documents**
 - 4.300 Scope of subpart.
 - 4.301 Definition.
 - 4.302 Policy.
 - 4.303 Contract clause.
 - Subpart 4.4—Safeguarding Classified Information Within Industry**
 - 4.401 [Reserved]
 - 4.402 General.
 - 4.403 Responsibilities of contracting officers.
 - 4.404 Contract clause.
 - Subpart 4.5—Electronic Commerce in Contracting**
 - 4.500 Scope of subpart.
 - 4.501 [Reserved]
 - 4.502 Policy.
 - Subpart 4.6—Contract Reporting**
 - 4.600 Scope of subpart.
 - 4.601 Record requirements.
 - 4.602 [Reserved]
 - 4.603 Solicitation provisions.
 - Subpart 4.7—Contractor Records Retention**
 - 4.700 Scope of subpart.
 - 4.701 Purpose.
 - 4.702 Applicability.
 - 4.703 Policy.
 - 4.704 Calculation of retention periods.
 - 4.705 Specific retention periods.
 - 4.705-1 Financial and cost accounting records.
 - 4.705-2 Pay administration records.
 - 4.705-3 Acquisition and supply records.
 - Subpart 4.8—Government Contract Files**
 - 4.800 Scope of subpart.
 - 4.801 General.
 - 4.802 Contract files.
 - 4.803 Contents of contract files.
 - 4.804 Closeout of contract files.
 - 4.804-1 Closeout by the office administering the contract.
 - 4.804-2 Closeout of the contracting office files if another office administers the contract.
 - 4.804-3 Closeout of paying office contract files.
 - 4.804-4 Physically completed contracts.
 - 4.804-5 Procedures for closing out contract files.
 - 4.805 Storage, handling, and disposal of contract files.
 - Subpart 4.9—Taxpayer Identification Number Information**
 - 4.900 Scope of subpart.
 - 4.901 Definition.
 - 4.902 General.
 - 4.903 Reporting contract information to the IRS.
 - 4.904 Reporting payment information to the IRS.
 - 4.905 Solicitation provision.
 - Subpart 4.10—Contract Line Items**
 - 4.1001 Policy.
 - Subpart 4.11—Contract Review Board**
 - 4.1101 Function.
 - 4.1102 Procedure.
 - 4.1103 Actions Requiring Referral to the CRB.
 - 4.1104 Actions Requiring Referral to the Chairperson, CRB.

This page intentionally left blank.

4.000 Scope of part.

This part prescribes policies and procedures relating to the administrative aspects of contract execution, contractor-submitted paper documents, distribution, reporting, retention, and files.

Subpart 4.1—Contract Execution**4.101 Contracting officer's signature.**

Only contracting officers shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor. The contracting officer shall ensure that the signer(s) have authority to bind the contractor (see specific requirements in 4.102 of this subpart).

4.102 Contractor's signature.

(a) *Individuals.* A contract with an individual shall be signed by that individual. A contract with an individual doing business as a firm shall be signed by that individual, and the signature shall be followed by the individual's typed, stamped, or printed name and the words, "an individual doing business as _____" [*insert name of firm*].

(b) *Partnerships.* A contract with a partnership shall be signed in the partnership name. Before signing for the Government, the contracting officer shall obtain a list of all partners and ensure that the individual(s) signing for the partnership have authority to bind the partnership.

(c) *Corporations.* A contract with a corporation shall be signed in the corporate name, followed by the word "by" and the signature and title of the person authorized to sign. The contracting officer shall ensure that the person signing for the corporation has authority to bind the corporation.

(d) *Joint venturers.* A contract with joint venturers may involve any combination of individuals, partnerships, or corporations. The contract shall be signed by each participant in the joint venture in the manner prescribed in paragraphs (a) through (c) of this section for each type of participant. When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

(e) *Agents.* When an agent is to sign the contract, other than as stated in paragraphs (a) through (d) of this section, the agent's authorization to bind the principal must be established by evidence satisfactory to the contracting officer.

4.103 Contract clause.

The contracting officer shall insert the clause at 52.204-1, Approval of Contract, in solicitations and contracts if required by agency procedures.

4.104 JCP Approval Requirement.

Pursuant to a Joint Committee on Printing (JCP) resolution approved April 9, 1987, the Public Printer is required to submit annually an annual plan, consisting of a capital equipment budget, together with a detailed description and justification for the execution of any interagency agreements to the JCP. After approval of any annual plan, the Public Printer is prohibited from entering into any purchase, contract, lease, or rental where the cost exceeds \$50,000, or any interagency agreement (see part 17.5) where the cost exceeds \$20,000 annually, which are not included in the annual plan, without advance written approval by the JCP. This requirement does not apply to the procurement of paper and envelopes.

Subpart 4.2—Contract Distribution

4.201 Procedures.

Contracting officers shall distribute copies of contracts or modifications within 10 working days after execution by all parties. As a minimum, the contracting officer shall—

(a) Distribute simultaneously one signed copy or reproduction of the signed contract to the contractor and the paying office;

(b) When a contract is assigned to another office for contract administration (see Subpart 42.2), provide to that office—

(1) One copy or reproduction of the signed contract and of each modification; and

(2) A copy of the contract distribution list, showing those offices that should receive copies of modifications, and any changes to the list as they occur;

(c) Distribute one copy to each accounting and finance office (funding office) whose funds are cited in the contract;

(d) When the contract is not assigned for administration but contains a Cost Accounting Standards clause, provide one copy of the contract to the cognizant administrative contracting officer and mark the copy “*For Cost Accounting Standards Administration Only*” (see 30.601(b));

(e) Provide copies of contracts and modifications to those organizations required to perform contract administration support functions (*e.g.*, when manufacturing is performed at multiple sites, the contract administration office cognizant of each location).

4.202 Distribution requirements.

Materials Management Service shall limit additional distribution requirements to the minimum necessary for proper performance of essential functions. When contracts are assigned for administration to a contract administration office located in an agency different from that of the contracting office (see Part 42), the two agencies shall agree on any necessary distribution in addition to that prescribed in 4.201.

4.203 Taxpayer identification information.

(a) If the contractor has furnished a Taxpayer Identification Number (TIN) when completing the solicitation provi-

sion at 52.204-3, Taxpayer Identification, or paragraph (b) of the solicitation provision at 52.212-3, Offeror Representations and Certifications—Commercial Items, the contracting officer shall, unless otherwise provided in agency procedures, attach a copy of the completed solicitation provision as the last page of the copy of the contract sent to the payment office.

(b) If the TIN or type of organization is derived from a source other than the provision at 52.204-3 or 52.212-3(b), the contracting officer shall annotate the last page of the contract or order forwarded to the payment office to state the contractor’s TIN and type of organization, unless this information is otherwise provided to the payment office in accordance with agency procedures.

(c) If the contractor provides its TIN or type of organization to the contracting officer after award, the contracting officer shall forward the information to the payment office within 7 days of its receipt.

(d) *Federal Supply Schedule contracts.* Each contracting officer that places an order under a Federal Supply Schedule contract (see Subpart 8.4) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (b) of this section.

(e) *Basic ordering agreements and indefinite-delivery contracts (other than Federal Supply Schedule contracts).*

(1) Each contracting officer that issues a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide to contracting officers placing orders under the agreement or contract—

(i) A copy of the agreement or contract with a copy of the completed solicitation provision at 52.204-3 or 52.212-3(b) as the last page of the agreement or contract; or

(ii) The contractor’s TIN and type of organization information.

(2) Each contracting officer that places an order under a basic ordering agreement or indefinite-delivery contract (other than a Federal Supply Schedule contract) shall provide the TIN and type of organization information to the payment office in accordance with paragraph (a) or (b) of this section.

Subpart 4.3—Paper Documents**4.300 Scope of subpart.**

This subpart provides policies and procedures on contractor-submitted paper documents.

4.301 Definition.

“Printed or copied double-sided,” as used in this subpart, means printing or reproducing a document so that information is on both sides of a sheet of paper.

4.302 Policy.

When electronic commerce methods (see 4.502) are not being used, a contractor should submit paper documents to the Government relating to an acquisition printed or copied double-sided on recycled paper whenever practicable. If the contractor cannot print or copy double-sided, it should print or copy single-sided on recycled paper.

4.303 Contract clause.

Insert the clause at 52.204-4, Printed or Copied Double-Sided on Recycled Paper, in solicitations and contracts that exceed the simplified acquisition threshold.

Subpart 4.4—Safeguarding Classified Information Within Industry

4.401 [Reserved]

4.402 General.

(a) Executive Order 12829, January 6, 1993 (58 FR 3479, January 8, 1993), entitled “National Industrial Security Program” (NISP), establishes a program to safeguard Federal Government classified information that is released to contractors, licensees, and grantees of the United States Government. Executive Order 12829 amends Executive Order 10865, February 20, 1960 (25 FR 1583, February 25, 1960), entitled “Safeguarding Classified Information Within Industry,” as amended by Executive Order 10909, January 17, 1961 (26 FR 508, January 20, 1961).

(b) The National Industrial Security Program Operating Manual (NISPOM) incorporates the requirements of these Executive orders. The Secretary of Defense, in consultation with all affected agencies and with the concurrence of the Secretary of Energy, the Chairman of the Nuclear Regulatory Commission, and the Director of Central Intelligence, is responsible for issuance and maintenance of this Manual. The following DOD publications implement the program:

(1) National Industrial Security Program Operating Manual (NISPOM) (DOD 5220.22-M).

(2) Industrial Security Regulation (ISR) (DOD 5220.22-R).

(c) Procedures for the protection of information relating to foreign classified contracts awarded to U.S. industry, and instructions for the protection of U.S. information relating to classified contracts awarded to foreign firms, are prescribed in Chapter 10 of the NISPOM.

(d) Part 27—Patents, Data, and Copyrights, contains policy and procedures for safeguarding classified information in patent applications and patents.

4.403 Responsibilities of contracting officers.

(a) *Presolicitation phase.* Contracting officers shall review all proposed solicitations to determine whether access to classified information may be required by offerors, or by a contractor during contract performance.

(1) If access to classified information of another agency may be required, the contracting officer shall—

(i) Determine if the agency is covered by the NISP; and

(ii) Follow that agency’s procedures for determining the security clearances of firms to be solicited.

(2) If the classified information required is from the contracting officer’s agency, the contracting officer shall follow agency procedures.

(b) *Solicitation phase.* Contracting officers shall—

(1) Ensure that the classified acquisition is conducted as required by the NISP or agency procedures, as appropriate; and

(2) Include—

(i) An appropriate Security Requirements clause in the solicitation (see 4.404); and

(ii) As appropriate, in solicitations and contracts when the contract may require access to classified information, a requirement for security safeguards in addition to those provided in the clause (52.204-2, Security Requirements).

(c) *Award phase.* Contracting officers shall inform contractors and subcontractors of the security classifications and requirements assigned to the various documents, materials, tasks, subcontracts, and components of the classified contract as follows:

(1) Agencies covered by the NISP shall use the Contract Security Classification Specification, DD Form 254. The contracting officer, or authorized representative, is the approving official for the form and shall ensure that it is prepared and distributed in accordance with the ISR.

(2) Contracting officers in agencies not covered by the NISP shall follow agency procedures.

4.404 Contract clause.

(a) The contracting officer shall insert the clause at 52.204-2, Security Requirements, in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in paragraph (d) of this section apply.

(b) If a cost contract (see 16.302) for research and development with an educational institution is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) If a construction or architect-engineer contract where employee identification is required for security reasons is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the contracting agency is not covered by the NISP and has prescribed a clause and alternates that are substantially the same as those at 52.204-2, the contracting officer shall use the agency-prescribed clause as required by agency procedures.

Subpart 4.5—Electronic Commerce in Contracting

4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Materials Management acquisition.

4.501 [Reserved]

4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (*e.g.*, “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the MMAR (*e.g.*, transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, the Director, MMS shall ensure that systems, technologies, procedures, and processes

used by the Materials Management Service to conduct electronic commerce—

(1) Are implemented uniformly throughout MMS, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures;

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(4) Include a single means of providing widespread public notice of acquisition opportunities and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the Director, Materials Management Service, shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

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

4.601 Record requirements.

(a) Materials Management Service shall establish and maintain for a period of 5 years a computer file, by fiscal year, containing unclassified records of all procurements exceeding \$25,000.

(b) With respect to each procurement carried out using competitive procedures, Materials Management Service shall be able to access from the computer file, as a minimum, the following information:

- (1) The date of contract award.
- (2) Information identifying the source to whom the contract was awarded.
- (3) The property or services obtained by the Government under the procurement.
- (4) The total cost of the procurement.
- (5) Those procurements which result in the submission of a single bid or proposal so that they can be separately categorized and designated noncompetitive procurements using competitive procedures.

(c) In addition to paragraph (b) of this section with respect to each procurement carried out using procedures other than competitive procedures, Materials Management Service shall be able to access from the computer file—

- (1) The reason under Subpart 6.3 for the use of such procedures; and
- (2) The identity of the organization or activity which conducted the procurement.

(d) In addition to the information described in paragraphs (b) and (c) of this section, for procurements in excess of \$25,000, Materials Management Service shall be able to access information on the following from the computer file:

- (1) Awards to small disadvantaged businesses using either set-asides or full and open competition.
- (2) Awards to business concerns owned and controlled by women.
- (3) The number of offers received in response to a solicitation.
- (4) Task or delivery order contracts.
- (5) Contracts for the acquisition of commercial items.

4.602 [Reserved]

4.603 Solicitation provisions.

(a)(1) The contracting officer shall insert the provision at 52.204-6, Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or a similar agency form.

(2) For offerors located outside the United States, the contracting officer may modify paragraph (c) of the provision at 52.204-6 to provide the correct phone numbers for the Dun & Bradstreet offices in the areas from which offerors are anticipated to respond.

(b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business (Other Than Small Business), in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, if the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

Subpart 4.7—Contractor Records Retention

4.700 Scope of subpart.

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

4.701 Purpose.

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

4.702 Applicability.

(a) This subpart applies to records generated under contracts that contain one of the following clauses:

- (1) Audit and Records—Sealed Bidding (52.214-26).
- (2) Audit and Records—Negotiation (52.215-2).

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available records, which includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for—

- (1) 3 years after final payment or, for certain records;
- (2) The period specified in 4.705 through 4.705-3, whichever of these periods expires first.

(b) Contractors shall make available the foregoing records and supporting evidence for a longer period of time than is required in 4.703(a) if—

- (1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
- (2) The contractor, for its own purposes, retains the foregoing records and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor’s retention or 3 years after final payment, whichever period expires first.

(3) The contractor does not meet the original due date for submission of final indirect cost rate proposals specified in paragraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and paragraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.

(c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in

electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

(1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.

(2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.

(3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.

(d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors’ computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

4.704 Calculation of retention periods.

(a) The retention periods in 4.705 are calculated from the end of the contractor’s fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor’s fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.

(b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

(c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this

subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply to all contractor records that come within the description.

4.705-1 Financial and cost accounting records.

(a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.

(b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.

(c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.

(d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.

(e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

(f) Labor cost distribution cards or equivalent documents: Retain 2 years.

(g) Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705-2 Pay administration records.

(a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.

(b) Clock cards or other time and attendance cards: Retain 2 years.

(c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

4.705-3 Acquisition and supply records.

(a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.

(b) Work orders for maintenance and other services: Retain 4 years.

(c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.

(d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.

(e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.

(f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; *e.g.*, memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244-2): Retain 4 years.

(g) Production records of quality control, reliability, and inspection: Retain 4 years.

Subpart 4.8—Government Contract Files

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files.

4.801 General.

(a) The head of each division performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.

(b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of—

- (1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;
- (2) Supporting actions taken;
- (3) Providing information for reviews and investigations; and
- (4) Furnishing essential facts in the event of litigation or congressional inquiries.

(c) The files to be established include—

- (1) A file for cancelled solicitations;
- (2) A file for each contract; and
- (3) A file such as a contractor general file, containing documents relating—for example—to—
 - (i) No specific contract;
 - (ii) More than one contract; or
 - (iii) The contractor in a general way (*e.g.*, contractor's management systems, past performance, or capabilities).

4.802 Contract files.

(a) A contract file should generally consist of—

- (1) The contracting office contract file that documents the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;
- (2) The contract administration office contract file that documents actions reflecting the basis for and the performance of contract administration responsibilities; and
- (3) The paying office contract file that documents actions prerequisite to, substantiating, and reflecting contract payments.

(b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; *e.g.*, if all functions or any combination of the functions are performed by the same office.

(c) Files must be maintained at organizational levels that ensure—

- (1) Effective documentation of contract actions;
- (2) Ready accessibility to principal users;

(3) Minimal establishment of duplicate and working files;

(4) The safeguarding of classified documents; and

(5) Conformance with agency regulations for file location and maintenance.

(d) If the contract files or file segments are decentralized (*e.g.*, by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104-4).

(f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

4.803 Contents of contract files.

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

(a) *Contracting office contract file.* (1) Purchase request, acquisition planning information, and other presolicitation documents.

(2) Justifications and approvals, determinations and findings, and associated documents.

(3) Evidence of availability of funds.

(4) Synopsis of proposed acquisition as required by Part 5 or a reference to the synopsis.

(5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.

(6) Set-aside decision.

(7) Government estimate of contract price.

(8) A copy of the solicitation and all amendments thereto.

(9) Security requirements and evidence of required clearances.

(10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals; and

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

(11) Contractor's certifications and representations.

(12) Preaward survey reports or reference to previous preaward survey reports relied upon.

(13) Source selection documentation.

(14) Contracting officer's determination of the contractor's responsibility.

(15) Small Business Administration Certificate of Competency.

(16) Records of contractor's compliance with labor policies including equal employment opportunity policies.

(17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.

(18) Packaging and transportation data.

(19) Cost or price analysis.

(20) Audit reports or reasons for waiver.

(21) Record of negotiation.

(22) Justification for type of contract.

(23) Authority for deviations from this regulation, statutory requirements, or other restrictions.

(24) Required approvals of award and evidence of legal review.

(25) Notice of award.

(26) The original of—

(i) The signed contract or award;

(ii) All contract modifications; and

(iii) Documents supporting modifications executed by the contracting office.

(27) Synopsis of award or reference thereto.

(28) Notice to unsuccessful quoters or offerors and record of any debriefing.

(29) Acquisition management reports (see Subpart 4.6).

(30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.

(31) Report of postaward conference.

(32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.

(33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.

(34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.

(35) Rejected engineering change proposals.

(36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.

(37) Contract completion documents.

(38) Documentation regarding termination actions for which the contracting office is responsible.

(39) Cross-references to pertinent documents that are filed elsewhere.

(40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.

(41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.

(b) *Contract administration office contract file.* (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.

(2) Any document modifying the normal assignment of contract administration functions and responsibility.

(3) Security requirements.

(4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.

(5) Preaward survey information.

(6) Purchasing system information.

(7) Consent to subcontract or purchase.

(8) Performance and payment bonds and surety information.

(9) Postaward conference records.

(10) Orders issued under the contract.

(11) Notice to proceed and stop orders.

(12) Insurance policies or certificates of insurance or references to them.

(13) Documents supporting advance or progress payments.

(14) Progressing, expediting, and production surveillance records.

(15) Quality assurance records.

(16) Property administration records.

(17) Documentation regarding termination actions for which the contract administration office is responsible.

(18) Cross reference to other pertinent documents that are filed elsewhere.

(19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.

(20) Contract completion documents.

(c) *Paying office contract file.* (1) Copy of the contract and any modifications.

(2) Bills, invoices, vouchers, and supporting documents.

(3) Record of payments or receipts.

(4) Other pertinent documents.

4.804 Closeout of contract files.

4.804-1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at 4.804-1(a)(2), (3), and (4), the contracting officer shall use the closeout procedures at 4.804-5. However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see 42.708) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if—

(1) The contract is in litigation or under appeal; or

(2) In the case of a termination, all termination actions have not been completed.

4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

4.804-3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

4.804-4 Physically completed contracts.

(a) Except as provided in paragraph (b) of this section, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Facilities contracts and rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

4.804-5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

(1) Disposition of classified material is completed;

(2) Final patent report is cleared;

(3) Final royalty report is cleared;

(4) There is no outstanding value engineering change proposal;

(5) Plant clearance report is received;

(6) Property clearance is received;

(7) All interim or disallowed costs are settled;

(8) Price revision is completed;

(9) Subcontracts are settled by the prime contractor;

(10) Prior year indirect cost rates are settled;

(11) Termination docket is completed;

(12) Contract audit is completed;

(13) Contractor's closing statement is completed;

(14) Contractor's final invoice has been submitted; and

(15) Contract funds review is completed and excess funds deobligated.

(b) When the actions in paragraph (a) of this subsection have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:

(1) Contract administration office name and address (if different from the contracting office).

(2) Contracting office name and address.

(3) Contract number.

(4) Last modification number.

(5) Last call or order number.

(6) Contractor name and address.

(7) Dollar amount of excess funds, if any.

(8) Voucher number and date, if final payment has been made.

(9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.

(10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.

(11) Name and signature of the contracting officer.

(12) Date.

(c) When the statement is completed, the contracting officer must ensure that—

(1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and

(2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

4.805 Storage, handling, and disposal of contract files.

(a) Materials Management Service must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of Part 4, law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small

purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention Period
(1) Records pertaining to Contract Disputes Act actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.
(2) Contracts (and related records or documents, including successful proposals) exceeding the simplified acquisition threshold for other than construction.	6 years and 3 months after final payment.
(3) Contracts (and related records or documents, including successful proposals) at or below the simplified acquisition threshold for other than construction.	3 years after final payment.
(4) Construction contracts:	
(i) Above \$2,000.	6 years and 3 months after final payment.
(ii) \$2,000 or less.	3 years after final payment.
(iii) Related records or documents, including successful proposals, except for contractor's payrolls (see (b)(4)(iv)).	Same as contract file.
(iv) Contractor's payrolls submitted in accordance with Department of Labor regulations, with related certifications, anti-kickback affidavits, and other related papers.	3 years after contract completion unless contract performance is the subject of an enforcement action on that date.
(5) Solicited and unsolicited unsuccessful offers, quotations, bids, and proposals:	
(i) Relating to contracts above the simplified acquisition threshold.	If filed separately from contract file, until contract is completed. Otherwise, the same as related contract file.
(ii) Relating to contracts at or below the simplified acquisition threshold.	1 year after date of award or until final payment, whichever is later.
(6) Files for canceled solicitations.	5 years after cancellation.

Document	Retention Period
(7) Other copies of procurement file records used by component elements of a contracting office for administrative purposes.	Upon termination or completion.
(8) Documents pertaining generally to the contractor as described at 4.801(c)(3).	Until superseded or obsolete.
(9) Investigations, cases pending or in litigation (including protests), or similar matters.	Until final clearance or settlement, or, if related to a document identified in (b)(1) - (9), for the retention period specified for the related document, whichever is later.

Subpart 4.9—Taxpayer Identification Number Information

4.900 Scope of subpart.

This subpart provides policies and procedures for obtaining—

- (a) Taxpayer Identification Number (TIN) information that may be used for debt collection purposes; and
- (b) Contract information and payment information for submittal to the payment office for Internal Revenue Service (IRS) reporting purposes.

4.901 Definition.

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

4.902 General.

(a) *Debt collection.* 31 U.S.C. 7701(c) requires each contractor doing business with a Government agency to furnish its TIN to that agency. 31 U.S.C. 3325(d) requires the Government to include, with each certified voucher prepared by the Government payment office and submitted to a disbursing official, the TIN of the contractor receiving payment under the voucher. The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor’s relationship with the Government.

(b) *Information reporting to the IRS.* The TIN is also required for Government reporting of certain contract information (see 4.903) and payment information (see 4.904) to the IRS.

4.903 Reporting contract information to the IRS.

(a) 26 U.S.C. 6050M, as implemented in 26 CFR, requires agencies to report certain information to the IRS.

(b)(1) The required information applies to contract modifications entered into on or after April 1, 1990.

(2) The reporting requirement also applies to certain contracts and modifications thereto in excess of \$25,000 entered into on or after January 1, 1989.

(c) The information to report is—

- (1) Name, address, and TIN of the contractor;
- (2) Name and TIN of the common parent (if any);
- (3) Date of the contract action;
- (4) Amount obligated on the contract action; and
- (5) Estimated contract completion date.

(d) Transmit the information to the IRS through the Federal Procurement Data System (see Subpart 4.6 and implementing instructions).

4.904 Reporting payment information to the IRS.

26 U.S.C. 6041 and 6041A, as implemented in 26 CFR, in part, require payors, including Government agencies, to report to the IRS, on Form 1099, payments made to certain contractors. 26 U.S.C. 6109 requires a contractor to provide its TIN if a Form 1099 is required. The payment office is responsible for submitting reports to the IRS.

4.905 Solicitation provision.

The contracting officer shall insert the provision at 52.204-3, Taxpayer Identification, in solicitations that are not conducted under the procedures of Part 12, unless the TIN, type of organization, and common parent information for each offeror will be obtained from some other source (*e.g.*, centralized database) in accordance with agency procedures.

Subpart 4.10—Contract Line Items**4.1001 Policy.**

Contracts may identify the items or services to be acquired as separately identified line items. Contract line items should provide unit prices or lump sum prices for separately

identifiable contract deliverables, and associated delivery schedules or performance periods. Line items may be further subdivided or stratified for administrative purposes (*e.g.*, to provide for traceable accounting classification citations).

Subpart 4.11—Contract Review Board

4.1101 Function.

(a) The Contract Review Board (CRB) provides an objective and independent review of select proposed procurement actions to—

- (1) ensure compliance with established acquisition policy and procedures;
- (2) to insure that the actions are in the best interests of the Government; and
- (3) to foster training of contracting personnel.

(b) The CRB provides review at the highest level of competence and experience available to the contracting activity. This review is supplemental to, not a substitution for, normal supervisory and Contracting Officer functions.

4.1102 Procedure.

(a) All actions for Board consideration shall be accompanied by a memorandum which sets forth the pertinent facts and the recommendation of the Contracting Officer. The memorandum shall be accompanied by all relevant documents, e.g., non-responsive bids, authorities, determinations and findings (D&F), bid abstracts, etc.

(b) Concurrence or nonconcurrence of each CRB member must be indicated by his or her signature on the CRB memorandum, together with any reasons for nonconcurrence, and dated. The memorandum shall be included in the official contract file. In the event that a majority of the CRB members do not concur with the proposed action, the Board will consult together to assure that all facts have been considered before returning the proposed action to the Contracting Officer.

(c) If the Contracting Officer decides to take action contrary to the position taken by a majority of the Board, he or she shall promptly inform the Chairperson, in writing, of the proposed action and the reasons thereof. A written statement of the action and rationale shall be included in the official contract file.

(d) The Chairperson shall provide for a record to be maintained of all actions submitted to the Board for consideration and review.

4.1103 Actions Requiring Referral to the CRB.

The actions cited below shall be referred to the CRB for its review. In preparing for Board submission, the factors set forth under the applicable action and any other appropriate information, should be addressed.

(a) *Prior to award.*

- (1) Proposed Award Over \$50,000.

(i) Provide a brief resume of the action and the Contracting Officer's decision.

(ii) Include pertinent information supporting the decision recommendation.

(2) Proposed award to other than the bidder submitting the lowest responsive bid.

(i) Include price spread between the lowest bid and the one recommended for award.

(ii) Include reasons for not recommending award to the bidder submitting the lowest responsive bid.

(iii) Include pertinent information supporting the decision/recommendation, e.g., performance history, basis for the price reasonableness, etc.

(3) Proposed award of a competitively negotiated procurement resulting from a request for proposals (RFP), for the public exigency, or when negotiation is authorized after advertising.

(i) Provide a copy of the contract.

(ii) Provide a copy of the justification for public exigency to negotiate.

(iii) Attach a copy of the summary of negotiations including the basis for price reasonableness.

(iv) Attach a copy of the request for proposals containing a statement of evaluation criteria and statement of technical and cost or price analysis.

(4) Proposed award when only one responsive bid is received.

(i) Include number of bids solicited.

(ii) Include statement of previous bid(s) for identical or similar procurements or an informal estimate or other basis for price reasonableness.

(5) Proposed award of a noncompetitive negotiated procurement.

(i) Include reasons for noncompetitive purchase and price reasonableness decision.

(ii) Include what action will be taken to obtain future competition if nonproprietary.

(6) Proposed cancellation of a solicitation, after bid opening or closing date for receipt of proposals, and subsequent contemplated resolicitation. (A solicitation may be resolicited without CRB review when no bids or proposals have been received at time of opening or closing.)

(i) Provide an analysis of the solicitation defect(s) causing cancellation.

(ii) Describe what will be accomplished by cancellation and resolicitation.

(b) *Post award.*

(1) Proposed termination of contract for default over \$1,000.

(i) Provide an analysis of the actions taken prior to submission to the CRB, e.g., issuance of a "Cure Notice," "Show Cause" letter, etc. Also, advise if reprocurement is required.

(2) Proposed termination of a contract for the convenience of the Government when resolicitation is required.

(i) Provide an analysis of the reasons for the termination and an explanation of the need for the resolicitation.

(3) Proposed settlement of a terminated contract, except one terminated for convenience when the settlement is less than \$5,000.

(i) Provide an analysis of the contractors settlement proposal, and how the final settlement was attained.

(4) Proposed modification of a contract (or print order if a PPD term contract) involving an increase or decrease of 25 percent or more of the contract (or print order) amount if the increase/decrease exceeds \$5,000, or any modification which increases or decreases the contract (or print order) amount in excess of \$25,000.

(i) Provide a resume of the current contract, and the proposed modification. Include an explanation as to the necessity for modifying the existing contract in lieu of a new procurement. Also, provide information supporting the determination of costs.

(c) *Other.*

Federal supply schedules, interagency agreements, contracts with other agencies or vendors, or other actions not specifically identified herein, may be presented before the CRB when additional judgement, advice, would assist in resolving existing or potential problems. The Chairperson shall be contacted for a determination when there is a question whether a proposed action requires CRB review.

4.1104 Actions Requiring Referral to the Chairperson, CRB.

Prior to award and post-award mistakes in bid shall be processed as required by GPO instruction 910.1A, Mistakes in Bid, dated March 30, 1998.

(a) Provide copies of specification, bid lists, correspondence, and other documentation supporting the mistake claimed.

(b) Include in D&F a statement as to whether the evidence is considered clear and convincing and the basis for the determination.

* * * * *

**MATERIALS MANAGEMENT
ACQUISITION REGULATION**

**SUBCHAPTER B—COMPETITION AND
ACQUISITION PLANNING**

PART 5—PUBLICIZING CONTRACT ACTIONS

Sec.

5.000	Scope of part.	5.302	Preparation and transmittal of synopses of awards.
5.001	Definition.	5.303	Announcement of contract awards.
5.002	Policy.		
5.003	Governmentwide point of entry.		
Subpart 5.1—Dissemination of Information			
5.101	Methods of disseminating information.	5.401	General.
5.102	Availability of solicitations.	5.402	General public.
Subpart 5.2—Synopses of Proposed Contract Actions			
5.201	General.	5.403	Requests from Members of Congress.
5.202	Exceptions.	5.404	Release of long-range acquisition estimates.
5.203	Publicizing and response time.	5.404-1	Release procedures.
5.204	Presolicitation notices.	5.404-2	Announcements of long-range acquisition estimates.
5.205	Special situations.	5.405	Exchange of acquisition information.
5.206	Notices of subcontracting opportunities.		
5.207	Preparation and transmittal of synopses.		
Subpart 5.3—Synopses of Contract Awards			
5.301	General.		
			Subpart 5.4—Release of Information
			General.
			General public.
			Requests from Members of Congress.
			Release of long-range acquisition estimates.
			Release procedures.
			Announcements of long-range acquisition estimates.
			Exchange of acquisition information.
			Subpart 5.5—Paid Advertisements
			Definitions.
			Authority.
			Procedures.
			Use of advertising agencies.

This page intentionally left blank.

5.000 Scope of part.

This part prescribes policies and procedures for publicizing contract opportunities and award information.

5.001 Definition.

“Contract action,” as used in this part, means an action resulting in a contract, as defined in Subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

5.002 Policy.

Contracting officers must publicize contract actions in order to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns.

5.003 Governmentwide point of entry.

For any requirement in the MMAR to publish a notice, effective October 1, 2001, the contracting officer must transmit all notices to the GPE.

Subpart 5.1—Dissemination of Information**5.101 Methods of disseminating information.**

(a) If time allows, contracting officers must disseminate information on proposed contract actions as follows:

(1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the GPE (see 5.201), unless covered by 5.003.

(2) For proposed contract actions expected to exceed \$10,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of 5.207(d) and (g). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of 5.207(d) and (g). For example, the contracting officer may meet the requirements of 5.207(d) and (g) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at 5.202(a)(1), (a)(4) through (a)(9), or (a)(11) apply, when oral or electronic solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

(b) In addition, one or more of the following methods may be used:

(1) Preparing periodic handouts listing proposed contracts, and displaying them as in 5.101(a)(2).

(2) Assisting local trade associations in disseminating information to their members.

(3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see 5.205(d)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia (44 U.S.C. 3701).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with 44 U.S.C. 3702 (see 5.502(a)).

(c) The Contracting Officer must document the contract file to explain why information was not disseminated in accordance with this subpart.

5.102 Availability of solicitations.

(a)(1) Except as provided in paragraph (a)(4) of this section, and if time allows, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizops.gov>.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer need not make a solicitation available through the GPE when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access through the GPE;

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest; or

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(4) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD-ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the

public having a legitimate interest (for construction, see 36.211); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in 5.101(a) and (b), provide, upon request to small business concerns—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see Subpart 4.5) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under Part 6.

(f) This section 5.102 applies to classified contracts to the extent consistent with agency security requirements (see 5.202(a)(1)).

Subpart 5.2—Synopsis of Proposed Contract Actions

5.201 General.

(a) If time allows, Materials Management Service must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in 5.202 and the special situations in 5.205, the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in 5.101(a)(1);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in 5.101(a)(1); or

(iii) Contract action in any amount when advantageous to the Government.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d)(1) The GPE may be accessed via the Internet at <http://www.fedbizopps.gov>.

5.202 Exceptions.

The contracting officer need not submit the notice required by 5.201 when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The proposed contract action is made under the conditions described in 6.302-2 (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in 5.203;

(3) The proposed contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The proposed contract action is expressly authorized or required by a statute to be made through another Government agency, or from a specific source such as a workshop for the blind under the rules of the Committee for the Purchase from the Blind and Other Severely Handicapped;

(5) The proposed contract action is for utility services other than telecommunications services and only one source is available;

(6) The proposed contract action is an order placed under Subpart 16.5;

(7) The proposed contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see 2.101) and publication of any notice complying with 5.207 would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the proposed contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see 6.302-1(a)(2)(i));

(8) The proposed contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(9) The proposed contract action is made under conditions described in 6.302-3, or 6.302-5 with regard to brand name commercial items for authorized resale, or 6.302-7, and advance notice is not appropriate or reasonable;

(10) The proposed contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of 5.207 with respect to the current proposed contract action;

(11) The proposed contract action—

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

(iii) Permits the public to respond to the solicitation electronically; or

(12) The proposed contract action is made under conditions described in 6.302-3 with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing, that advance notice is not appropriate or reasonable.

5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under 5.201, they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see 5.201). For notices published before January 1, 2002, the publication date is the date the notice is published in the CBD. For notices published on or after January 1, 2002, the publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see 12.603).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions via FACNET or for which the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see 5.203(b)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the proposed contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice required in 5.201 for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume that notice has been published 10 days (6 days if electronically transmitted through the GPE or other means) following transmittal of the synopsis to the CBD. This presumption is based on the CBD's confirmation that publication does occur within these time frames. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact

been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the proposed contract action under the authority of 5.202(a)(2).

5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see 15.201 and 36.213-2). The contracting officer must synopsise a proposed contract action before issuing any resulting solicitation (see 5.201 and 5.203).

5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may transmit to the GPE advance notices of their interest in potential R&D programs whenever market research does not produce a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Potential sources which respond to advance notices must be added to the appropriate solicitation mailing list for subsequent solicitation. Advance notices must be entitled "Research and Development Sources Sought," cite the appropriate Numbered Note, and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers must synopsise (see 5.201) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in 5.202 applies.

(b) *Special notices.* Contracting officers may transmit to the GPE special notices of procurement matters such as business fairs, long-range procurement estimates, prebid or pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(c) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by 5.202, contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000.

(2) When the total fee is expected to exceed \$10,000 but not exceed \$25,000, the contracting officer must comply with 5.101(a)(2). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this sec-

tion, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with 5.101(b).

5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE, to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, and small women-owned business concerns, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding \$100,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding \$100,000, that has a subcontracting opportunity exceeding \$10,000.

(b) The notices must describe—

(1) The business opportunity, following the standard CDB format for items 7, 10, 11, and 17 in 5.207(b)(4);

(2) Any prequalification requirements; and

(3) Where to obtain technical data needed to respond to the requirement.

5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE or CBD must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Government Printing Office (GPO) Billing Account Code.

(5) Contracting Office Zip Code.

(6) Classification Code.

(7) Contracting Office Address.

(8) Subject.

(9) Proposed Solicitation Number.

(10) Opening and Closing Response Date.

(11) Contact Point or Contracting Officer.

(12) Contract Award and Solicitation Number.

(13) Contract Award Dollar Amount.

(14) Contract Line Item Number.

(15) Contract Award Date.

(16) Contractor.

(17) Description.

(18) Place of Contract Performance.

(19) Set-aside Status.

(b) *Transmittal*—(1) *GPE.* Transmissions must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(c) *Cancellation of synopsis.* Contracting officers should not publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE or CBD. Cancellations of solicitations must be made in accordance with 14.209 and 14.404-1.

Subpart 5.3—Synopsis of Contract Awards

5.301 General.

(a) Except for contract actions described in paragraph (b) of this section and as provided in 5.003, contracting officers must synopsize through the GPE awards exceeding \$25,000 that are—

(1) Subject to the Trade Agreements Act (see Subpart 25.4); or

(2) Likely to result in the award of any subcontracts. However, the dollar threshold is not a prohibition against publicizing an award of a smaller amount when publicizing would be advantageous to industry or to the Government.

(b) A notice is not required under paragraph (a) of this section if—

(1) The notice would disclose the agency's needs and the disclosure of such needs would compromise the national security;

(2) The award results from acceptance of an unsolicited research proposal that demonstrates a unique and innovative research concept and publication of any notice would disclose the originality of thought or innovativeness of the proposed research or would disclose proprietary information associated with the proposal;

(3) The contract action is an order placed under Subpart 16.5;

(4) The award is made for perishable subsistence supplies;

(5) The award is for utility services, other than telecommunications services, and only one source is available;

(6) The contract action—

(i) Is for an amount not greater than the simplified acquisition threshold;

(ii) Was made through a means where access to the notice of proposed contract action was provided through the GPE; and

(iii) Permitted the public to respond to the solicitation electronically; or

(7) The award is for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3.

(c) With respect to acquisitions subject to the Trade Agreements Act, contracting officers must submit synopses in sufficient time to permit publication in the CBD, through the GPE, not later than 60 days after award.

(d) When transmitting notices to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the CBD.

5.302 Preparation and transmittal of synopses of awards.

Contracting officers shall transmit synopses of contract awards in the same manner as prescribed in 5.207.

5.303 Announcement of contract awards.

(a) *Public announcement.* Contracting officers shall make information available on awards over \$3 million (unless another dollar amount is specified in agency acquisition regulations) in sufficient time for the agency concerned to announce it by 5:00 p.m. Washington, DC time on the day of award. Contracts excluded from this reporting requirement include (1) those placed with foreign firms when the place of delivery or performance is outside the United States or its possessions, and (2) those for which synopsis was exempted under 5.202(a)(1). Agencies shall not release information on awards before the public release time of 5:00 p.m. Washington, DC time.

(b) *Local announcement.* Agencies may also release information on contract awards to the local press or other media. When local announcements are made for contract awards in excess of the simplified acquisition threshold, they shall include—

(1) For awards after sealed bidding, a statement that the contract was awarded after competition by sealed bidding, the number of offers solicited and received, and the basis for selection (*e.g.*, the lowest responsible bidder); or

(2) For awards after negotiation, the information prescribed by 15.503(b), and after competitive negotiation (either price or design competition), a statement to this effect, and in general terms the basis for selection.

Subpart 5.4—Release of Information

5.401 General.

(a) A high level of business security must be maintained in order to preserve the integrity of the acquisition process. When it is necessary to obtain information from potential contractors and others outside the Government for use in preparing Government estimates, contracting officers shall ensure that the information is not publicized or discussed with potential contractors.

(b) Contracting officers may make available maximum information to the public, except information—

- (1) On plans that would provide undue or discriminatory advantage to private or personal interests;
- (2) Received in confidence from an offeror;
- (3) Otherwise requiring protection under Freedom of Information Act (see Subpart 24.2) or Privacy Act (see Subpart 24.1); or
- (4) Pertaining to internal agency communications (*e.g.*, technical reviews, contracting authority or other reasons, or recommendations referring thereto).

(c) This policy applies to all Government personnel who participate directly or indirectly in any stage of the acquisition cycle.

5.402 General public.

Contracting officers shall process requests for specific information from the general public, including suppliers, in accordance with Subpart 24.1 or 24.2, as appropriate.

5.403 Requests from Members of Congress.

(a) *Individual requests.* Contracting officers; working through the Office of Congressional Relations and the Office of the General Counsel; shall give Members of Congress, upon their request, detailed information regarding any particular contract. When responsiveness would result in disclosure of classified matter, business confidential information, or information prejudicial to competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, to the General Counsel.

(b) *Inclusion on solicitation mailing lists.* Upon request of a Congressional Committee or Subcommittee Chairperson, contracting officers shall place any member of a Committee or Subcommittee on the applicable solicitation mailing lists to receive automatic distribution of solicitations in the specific area of interest.

5.404 Release of long-range acquisition estimates.

To assist industry planning and to locate additional sources of supply, it may be desirable to publicize estimates of unclassified long-range acquisition requirements. Estimates may be publicized as far in advance as possible.

5.404-1 Release procedures.

(a) *Application.* The agency head, or a designee, may release long-range acquisition estimates if the information will—

- (1) Assist industry in its planning and facilitate meeting the acquisition requirements;
- (2) Not encourage undesirable practices (*e.g.*, attempts to corner the market or hoard industrial materials); and
- (3) Not indicate the existing or potential mobilization of the industry as a whole.

(b) *Conditions.* The agency head shall ensure that—

- (1) Classified information is released through existing security channels in accordance with agency security regulations;
- (2) The information is publicized as widely as practicable to all parties simultaneously by any of the means described in this part;
- (3) Each release states that—
 - (i) The estimate is based on the best information available,
 - (ii) The information is subject to modification and is in no way binding on the Government, and
 - (iii) More specific information relating to any individual item or class of items will not be furnished until the proposed action is synopsized through the GPE or the solicitation is issued;
- (4) Each release contains the name and address of the contracting officer that will process the acquisition;
- (5) Modifications to the original release are publicized as soon as possible, in the same manner as the original; and
- (6) Each release—
 - (i) Is coordinated in advance with small business, public information, and public relations personnel, as appropriate;
 - (ii) Contains, if applicable, a statement that small business set-asides may be involved, but that a determination can be made only when acquisition action is initiated; and
 - (iii) Contains the name or description of the item, and the estimated quantity to be acquired by calendar quarter, fiscal year, or other period. It may also contain such additional information as the number of units last acquired, the unit price, and the name of the last supplier.

5.404-2 Announcements of long-range acquisition estimates.

Further publicizing, consistent with the needs of the individual case, may be accomplished by announcing through the GPE that long-range acquisition estimates have been published and are obtainable, upon request, from the contracting officer.

5.405 Exchange of acquisition information.

(a) When the same item or class of items is being acquired by more than one agency, or by more than one contracting activity within an agency, the exchange and coordination of pertinent information, particularly cost and pricing data, between these agencies or contracting activities is necessary to promote uniformity of treatment of major issues and the resolution of particularly difficult or controversial issues. The exchange and coordination of information is particularly beneficial during the period of acquisition planning, presolicitation, evaluation, and pre-award survey.

(b) When substantial acquisitions of major items are

involved or when the contracting activity deems it desirable, the contracting activity shall request appropriate information (on both the end item and on major subcontracted components) from other agencies or contracting activities responsible for acquiring similar items. Each agency or contracting activity receiving such a request shall furnish the information requested. The contracting officer, early in a negotiation of a contract, or in connection with the review of a subcontract, shall request the contractor to furnish information as to the contractor's or subcontractor's previous Government contracts and subcontracts for the same or similar end items and major subcontractor components.

Subpart 5.5—Paid Advertisements

5.501 Definitions.

As used in this subpart—

“Advertisement” means any single message prepared for placement in communication media, regardless of the number of placements.

“Publication” means—

(1) The placement of an advertisement in a newspaper, magazine, trade or professional journal, or any other printed medium; or

(2) The broadcasting of an advertisement over radio or television.

5.502 Authority.

(a) *Newspapers.* Authority to approve the publication of paid advertisements in newspapers is vested in the head of each agency (44 U.S.C. 3702). This approval authority may be delegated. Contracting officers shall obtain written authorization in accordance with policy procedures before advertising in newspapers.

(b) *Other media.* Unless the agency head determines otherwise, advance written authorization is not required to place advertisements in media other than newspapers.

5.503 Procedures.

(a) *General.* (1) Orders for paid advertisements may be placed directly with the media or through an advertising agency. Contracting officers shall give small, small disadvantaged and women-owned small business concerns maximum opportunity to participate in these acquisitions.

(2) The contracting officer shall use the SF 1449 for paper solicitations. The SF 1449 shall be used to make awards or place orders unless the award/order is made by using electronic commerce or by using the Governmentwide commercial purchase card for micropurchases.

(b) *Rates.* Advertisements may be paid for at rates not over the commercial rates charged private individuals, with the usual discounts (44 U.S.C. 3703).

(c) *Proof of advertising.* Every invoice for advertising shall be accompanied by a copy of the advertisement or an affidavit of publication furnished by the publisher, radio or television station, or advertising agency concerned (44

U.S.C. 3703). Paying offices shall retain the proof of advertising until the General Accounting Office settles the paying office’s account.

(d) *Payment.* Upon receipt of an invoice supported by proof of advertising, the contracting officer shall attach a copy of the written authority (see 5.502(a)) and submit the invoice for payment under agency procedures.

5.504 Use of advertising agencies.

(a) *General.* Basic ordering agreements may be placed with advertising agencies for assistance in producing and placing advertisements when a significant number will be placed in several publications and in national media. Services of advertising agencies include, but are not limited to, counseling as to selection of the media for placement of the advertisement, contacting the media in the interest of the Government, placing orders, selecting and ordering typography, copywriting, and preparing rough layouts.

(b) *Use of commission-paying media.* The services of advertising agencies in placing advertising with media often can be obtained at no cost to the Government, over and above the space cost, as many media give advertising agencies a commission or discount on the space cost that is not given to the Government.

(c) *Use of noncommission-paying media.* Some media do not grant advertising agencies a commission or discount, meaning the Government can obtain the same rate as the advertising agency. If the advertising agency agrees to place advertisements in noncommission-paying media as a no-cost service, the basic ordering agreement shall so provide. If the advertising agency will not agree to place advertisements at no cost, the agreement shall—

(1) Provide that the Government may place orders directly with the media; or

(2) Specify an amount that the Government will pay if the agency places the orders.

(d) *Art work, supplies, and incidentals.* The basic ordering agreement also may provide for the furnishing by the advertising agency of art work, supplies, and incidentals, including brochures and pamphlets, but not their printing. “Incidentals” may include telephone calls, telegrams, and postage incurred by the advertising agency on behalf of the Government.

* * * * *

PART 6—COMPETITION REQUIREMENTS

Sec.

- | | | | |
|-------|---|---------|--|
| 6.000 | Scope of part. | 6.301 | Policy. |
| 6.001 | Applicability. | 6.302 | Circumstances permitting other than full and open competition. |
| 6.002 | Limitations. | 6.302-1 | Sole Source |
| 6.003 | [Reserved] | 6.302-2 | Public Exigency. |
| | Subpart 6.1—Full and Open Competition | 6.302-3 | [Reserved] |
| 6.100 | Scope of subpart. | 6.302-4 | [Reserved] |
| 6.101 | Policy. | 6.302-5 | Authorized or required by statute. |
| 6.102 | Use of competitive procedures. | 6.302-6 | [Reserved] |
| | Subpart 6.2—Full and Open Competition After Exclusion of Sources | 6.302-7 | [Reserved] |
| 6.200 | Scope of subpart. | 6.303 | Justifications. |
| 6.201 | Policy. | 6.303-1 | Requirements. |
| 6.202 | Establishing or maintaining alternative sources. | 6.303-2 | Content. |
| 6.203 | [Reserved] | 6.304 | Approval of the justification. |
| 6.204 | [Reserved] | 6.305 | Availability of the justification. |
| 6.205 | [Reserved] | | Subpart 6.4—Sealed Bidding and Competitive Proposals |
| | Subpart 6.3—Other Than Full and Open Competition | 6.401 | Sealed bidding and competitive proposals. |
| 6.300 | Scope of subpart. | | Subpart 6.5—[Reserved] |

This page intentionally left blank.

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. This part does not deal with the results of competition (*e.g.*, adequate price competition), that are addressed in other parts (*e.g.*, Part 15).

6.001 Applicability.

This part applies to all acquisitions except—

(a) Contracts awarded using the simplified acquisition procedures of Part 13 (but see 13.501 for requirements pertaining to sole source acquisitions of commercial items under Subpart 13.5);

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—

(1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order; or

(f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5.

6.002 Limitations.

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

6.003 [Reserved]**Subpart 6.1—Full and Open Competition****6.100 Scope of subpart.**

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

6.101 Policy.

(a) The GPO policy is, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently.

6.102 Use of competitive procedures.

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

(a) *Sealed bids.* (See 6.401(a).)

(b) *Competitive proposals.* (See 6.401(b).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (*e.g.*, two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, *et seq.*) is a competitive procedure (see Subpart 36.6 for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer or scientific review.

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

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

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

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102.

6.202 Establishing or maintaining alternative sources.

(a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—

(1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;

(2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;

(3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

(4) Ensure the continuous availability of a reliable source of supplies or services;

(5) Satisfy projected needs based on a history of high demand; or

(6) Satisfy a critical need for medical, safety, or emergency supplies.

(b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

(2) Technical and requirements personnel are responsible for providing all necessary data to support their recommendation to exclude a particular source.

(3) When the authority in paragraph (a)(1) of this section is cited, the findings shall include a description of the estimated reduction in overall costs and how the estimate was derived.

6.203 [Reserved]

6.204 [Reserved]

6.205 [Reserved]

Subpart 6.3—Other Than Full and Open Competition

6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

6.301 Policy.

(a) Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in 6.302.

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable (see 6.302).

(c) Contracting without providing for full and open competition shall not be justified on the basis of—

(1) A lack of advance planning by the requiring activity; or

(2) Concerns related to the amount of funds available (*e.g.*, funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in 6.102(a) or (b), if appropriate, or any other procedures authorized by this regulation.

6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in 6.303.

6.302-1 Sole Source.

(a) *Authority.* (1) Citations: 41 U.S.C. 5(3). When only one source of supply is available and the contracting officer shall so certify.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that—

(A) Demonstrates a unique and innovative concept (see definition at 2.101), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition.

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements.

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in 6.302-7; it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see Part 27).

(3) When acquiring utility services (see 41.101), circumstances may dictate that only one supplier can furnish the service (see 41.202); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand name descriptions.* An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer does not provide for full and open competition regardless of the number of sources solicited. It shall be justified and approved in accordance with MMAR 6.303 and 6.304. The justification should indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company. (Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced

by brand name, provide for full and open competition and do not require justifications and approvals to support their use.)

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304.

(2) For contracts awarded using this authority, the notices required by 5.201 shall have been published and any bids and proposals must have been considered.

6.302-2 Public Exigency.

(a) *Authority.* (1) Citations: 41 U.S.C. 5(2).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

6.302-3 [Reserved].

6.302-4 [Reserved].

6.302-5 Authorized or required by statute.

(a) *Authority.* (1) Citations: 41 U.S.C. 5.

(2) Full and open competition need not be provided for when—

(i) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or

(ii) The agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—18 U.S.C. 4124 (see Subpart 8.6).

(2) Qualified Nonprofit Agencies for the Blind or other Severely Disabled—41 U.S.C. 46-48c (see Subpart 8.7).

(3) Government Printing and Binding—44 U.S.C. 501-504, 1121 (see Subpart 8.8).

(4) The Robert T. Stafford Disaster Relief and Emergency Assistance Act—42 U.S.C. 5150 (see Subpart 26.2).

6.302-6 [Reserved].

6.302-7 [Reserved].

6.303 Justifications.

6.303-1 Requirements.

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in 6.302, the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by 6.304.

(b) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(c) Justifications required by paragraph (a) of this section may be made on an individual or class basis. Any justification for contracts awarded under the authority of 6.302-7 shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

(d) If the authority of 6.302-3(a)(2)(i) or 6.302-7 is being cited as a basis for not providing for full and open competition in an acquisition that would otherwise be subject to the Trade Agreements Act (see Subpart 25.4), the contracting officer must forward a copy of the justification, in accordance with agency procedures, to the agency's point of contact with the Office of the United States Trade Representative.

(e) The justifications for contracts awarded under the authority cited in 6.302-2 may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

6.303-2 Content.

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited. As a minimum, each justification shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency’s needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by Subpart 5.2 and, if not, which exception under 5.202 applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted (see Part 10) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When 6.302-1 is cited for follow-on acquisitions as described in 6.302-1(a)(2)(ii), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When 6.302-2 is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief.

(b) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government’s minimum

needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$500,000, the contracting officer’s certification required by 6.303-2(a)(12) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$500,000 but not exceeding \$10,000,000, by an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$10,000,000 but not exceeding \$50,000,000, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in grade GS 16 or above under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$50,000,000, by the senior procurement executive of the agency in accordance with agency procedures. This authority is not delegable.

(b) Any justification for a contract awarded under the authority of 6.302-7, regardless of dollar amount, shall be considered approved when the determination required by 6.302-7(c)(1) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

6.305 Availability of the justification.

(a) The justifications required by 6.303-1 and any related information shall be made available for public inspection. Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act (5 U.S.C. 552) and the prohibitions against disclosure in 24.202 in determining whether other data should be removed.

(b) If a Freedom of Information request is received, contracting officers shall comply with Subpart 24.2.

Subpart 6.4—Sealed Bidding and Competitive Proposals

6.401 Sealed bidding and competitive proposals.

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2; and, when appropriate, under Subpart 6.3.

(a) *Sealed bids.* (See Part 14 for procedures.) Contracting officers shall solicit sealed bids if—

(1) Time permits the solicitation, submission, and evaluation of sealed bids;

(2) The award will be made on the basis of price and other price-related factors;

(3) It is not necessary to conduct discussions with the responding offerors about their bids; and

(4) There is a reasonable expectation of receiving more than one sealed bid.

(b) *Competitive proposals.* (See Part 15 for procedures.)

(1) Contracting officers may request competitive proposals if sealed bids are not appropriate under paragraph (a) of this section.

(2) Because of differences in areas such as law, regulations, and business practices, it is generally necessary to conduct discussions with offerors relative to proposed contracts to be made and performed outside the United States, its possessions, or Puerto Rico. Competitive proposals will therefore be used for these contracts unless discussions are not required and the use of sealed bids is otherwise appropriate.

SUBPART 6.5—[RESERVED]

Subpart 6.5—[Reserved]

* * * * *

PART 7—ACQUISITION PLANNING

Sec.

7.000	Scope of part.	7.204	Responsibilities of contracting officers.
	Subpart 7.1—Acquisition Plans		Subpart 7.3—[Reserved]
7.101	Definitions.		Subpart 7.4—Equipment Lease or Purchase
7.102	Policy.	7.400	Scope of subpart.
7.103	Agency-head responsibilities.	7.401	Acquisition considerations.
7.104	General procedures.	7.402	Acquisition methods.
7.105	Contents of written acquisition plans.	7.403	General Services Administration assistance.
7.106	Additional requirements for major systems.	7.404	Contract clause.
7.107	Additional requirements for acquisitions involving bundling.		Subpart 7.5—Inherently Governmental Functions
	Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities	7.500	Scope of subpart.
7.200	Scope of subpart.	7.501	[Reserved]
7.201	[Reserved]	7.502	Applicability.
7.202	Policy.	7.503	Policy.
7.203	Solicitation provision.		

This page intentionally left blank.

7.000 Scope of part.

This part prescribes policies and procedures for—

- (a) Developing acquisition plans;
- (b) Determining whether to use commercial or Government resources for acquisition of supplies or services;
- (c) Deciding whether it is more economical to lease equipment rather than purchase it; and
- (d) Determining whether functions are inherently governmental.

Subpart 7.1—Acquisition Plans

7.101 Definitions.

As used in this subpart—

“Acquisition streamlining” means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

“Life-cycle cost” means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

“Order” means an order placed under a—

- (1) Federal Supply Schedule contract; or
- (2) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

“Planner” means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

7.102 Policy.

(a) Agencies shall perform acquisition planning and conduct market research (see Part 10) for all acquisitions in order to promote and provide for—

- (1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, to the maximum extent practicable; and
- (2) Full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired.

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets its needs in the most effective, economical, and

timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of 7.104 and 7.105 need not revise their system to specifically meet all of these requirements.

7.103 Agency-head responsibilities.

The agency head or a designee shall prescribe procedures for—

(a) Promoting and providing for full and open competition (see Part 6) or, when full and open competition is not required in accordance with Part 6, for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired.

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations; and

(c) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired. (See Part 6 and 10.002.)

(d) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, specifying those cases in which a written plan shall be prepared.

(e) Writing plans either on a systems basis, on an individual contract basis, or on an individual order basis, depending upon the acquisition.

(f) Ensuring that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan as well as for those that do.

(g) Designating planners for acquisitions.

(h) Reviewing and approving acquisition plans and revisions to these plans.

(i) Establishing criteria and thresholds at which design-to-cost and life-cycle-cost techniques will be used.

(j) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(k) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need.

(l) Assuring that the contracting officer, prior to contracting, reviews:

- (1) The acquisition history of the supplies and services; and
- (2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(m) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with 15 U.S.C. 205b (see 11.002(b)) and agency metric plans and guidelines.

(n) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the minimum content standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see 11.303); and

(2) Comply with the policy in 11.002(d) regarding procurement of products containing recovered materials, and environmentally preferable and energy-efficient products and services.

(o) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR part 1194) in proposed acquisitions (see 11.002(e)) and that these standards are included in requirements planning, as appropriate (see Subpart 39.2).

(p) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at 37.204.

(q) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all contracts or orders are adequately managed so as to ensure effective official control over contract or order performance.

(r) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based contracting methods and, therefore, fixed-price contracts (see 37.602-5) should occur for follow-on acquisitions.

(s) Ensuring that acquisition planners, to the maximum extent practicable—

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors.

(t) Ensuring that agency planners on information technology acquisitions comply with the capital planning and investment control requirements in 40 U.S.C. 1422 and OMB Circular A-130.

7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning. If the plan proposes using other than full and open competition.

7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see paragraph (b)(18) of this section). The plan must address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner must follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. Acquisition plans for service contracts or orders must describe the strategies for implementing performance-based contracting methods or must provide rationale for not using those methods (see Subpart 37.6).

(a) *Acquisition background and objectives*—(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of prior acquisitions on those alternatives, and any related in-house effort.

(2) *Applicable conditions.* State all significant conditions affecting the acquisition, such as—

(i) Requirements for compatibility with existing or future systems or programs; and

(ii) Any known cost, schedule, and capability or performance constraints.

(3) *Cost*. Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost*. Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost*. Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

(iii) *Application of should-cost*. Describe the application of should-cost analysis to the acquisition (see 15.407-4).

(4) *Capability or performance*. Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

(5) *Delivery or performance-period requirements*. Describe the basis for establishing delivery or performance-period requirements (see Subpart 11.4). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

(6) *Trade-offs*. Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.

(7) *Risks*. Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining*. If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to—

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory.

(b) *Plan of action*—(1) *Sources*. Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services (see Part 8). Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small busi-

ness, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see Part 19), and the impact of any bundling that might affect their participation in the acquisition (see 7.107). Address the extent and results of the market research and indicate their impact on the various elements of the plan (see Part 10).

(2) *Competition*. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in 6.302, discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Source-selection procedures*. Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see Subpart 15.3).

(4) *Acquisition considerations*. (i) For each contract contemplated, discuss contract type selection (see Part 16); use of multiyear contracting, options, or other special contracting methods (see Part 17); any special clauses, special solicitation provisions, or MMAR deviations required (see Subpart 1.4); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see Subpart 7.4) and why; and any other contracting considerations. Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm fixed price basis (see 37.102(a) and 16.505(a)(3)).

(ii) For each order contemplated, discuss—

(A) Why this action benefits the Government, such as when—

(1) The agency can accomplish its mission more efficiently and effectively (*e.g.*, take advantage of the servicing agency's specialized expertise; or gain access to contractors with needed expertise).

(5) *Budgeting and funding.* Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see Subpart 32.7).

(6) *Product or service descriptions.* Explain the choice of product or service description types (including performance-based contracting descriptions) to be used in the acquisition.

(7) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see Subpart 11.6).

(8) [Reserved].

(9) *Inherently governmental functions.* Address the consideration given to OFPP Policy Letter 92-1 (see Subpart 7.5).

(10) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort.

(11) *Make or buy.* Discuss any consideration given to make-or-buy programs (see 15.407-2).

(12) *Test and evaluation.* To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(13) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see Subpart 7.3) and distribution of commercial items;

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of warranties (see Part 46);

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see Part 27); and

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as "standard" so that future purchases of the equipment can be made from the same manufacturing source.

(14) *Government-furnished property.* Indicate any property to be furnished to contractors, including material and facilities, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see Part 45).

(15) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors.

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

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

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

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

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

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

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

7.106 Additional requirements for major systems.

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

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

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

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

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

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

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

7.107 Additional requirements for acquisitions involving bundling.

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

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this sec-

tion, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—

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

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

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

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

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

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

(e) Substantial bundling is any bundling that results in a contract with an average annual value of \$10 million or more. When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must—

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

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

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

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

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

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

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

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

Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities

7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

7.201 [Reserved]

7.202 Policy.

(a) The agency should procure supplies in such quantity as—

(1) Will result in the total cost and unit cost most advantageous to the Government, where practicable; and

(2) Does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation—

(1) To state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government; and

(2) If applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

7.203 Solicitation provision.

Contracting officers shall insert the provision at 52.207-4, Economic Purchase Quantity—Supplies, in solicitations for

supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that—

(a) The Government already has the data;

(b) The data is otherwise readily available; or

(c) It is impracticable for the Government to vary its future requirements.

7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at 52.207-4 to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

Subpart 7.3—[Reserved]

Subpart 7.4—Equipment Lease or Purchase

7.400 Scope of subpart.

This subpart provides guidance pertaining to the decision to acquire equipment by lease or purchase. It applies to both the initial acquisition of equipment and the renewal or extension of existing equipment leases.

7.401 Acquisition considerations.

(a) Agencies should consider whether to lease or purchase equipment based on a case-by-case evaluation of comparative costs and other factors. The following factors are the minimum that should be considered:

- (1) Estimated length of the period the equipment is to be used and the extent of use within that period.
- (2) Financial and operating advantages of alternative types and makes of equipment.
- (3) Cumulative rental payments for the estimated period of use.
- (4) Net purchase price.
- (5) Transportation and installation costs.
- (6) Maintenance and other service costs.
- (7) Potential obsolescence of the equipment because of imminent technological improvements.

(b) The following additional factors should be considered, as appropriate, depending on the type, cost, complexity, and estimated period of use of the equipment:

- (1) Availability of purchase options.
- (2) Potential for use of the equipment by other agencies after its use by the acquiring agency is ended.
- (3) Trade-in or salvage value.
- (4) Imputed interest.
- (5) Availability of a servicing capability, especially for highly complex equipment; *e.g.*, can the equipment be serviced by the Government or other sources if it is purchased?

7.402 Acquisition methods.

(a) *Purchase method.* (1) Generally, the purchase method is appropriate if the equipment will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(2) Agencies should not rule out the purchase method of equipment acquisition in favor of leasing merely because of the possibility that future technological advances might make the selected equipment less desirable.

(b) *Lease method.* (1) The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances—

- (i) Require immediate use of equipment to meet program or system goals; but
- (ii) Do not currently support acquisition by purchase.

(2) If a lease is justified, a lease with option to purchase is preferable.

(3) Generally, a long term lease should be avoided, but may be appropriate if an option to purchase or other favorable terms are included.

(4) If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase.

7.403 General Services Administration assistance.

(a) When requested by an agency, the General Services Administration (GSA) will assist in lease or purchase decisions by providing information such as—

- (1) Pending price adjustments to Federal Supply Schedule contracts;
- (2) Recent or imminent technological developments;
- (3) New techniques; and
- (4) Industry or market trends.

(b) Agencies may request information from the following GSA offices:

- (1) Center for Strategic IT Analysis (MKS), Washington, DC 20405, for information on acquisition of information technology.
- (2) Federal Supply Service, Office of Acquisition (FC), Washington, DC 20406, for information on other types of equipment.

7.404 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause in 52.207-5, Option to Purchase Equipment, in solicitations and contracts involving a lease with option to purchase.

Subpart 7.5—Inherently Governmental Functions

7.500 Scope of subpart.

The purpose of this subpart is to prescribe policies and procedures to ensure that inherently governmental functions are not performed by contractors. It implements the policies of Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, Inherently Governmental Functions.

7.501 [Reserved]

7.502 Applicability.

The requirements of this subpart apply to all contracts for services. This subpart does not apply to services obtained through either personnel appointments, advisory committees, or personal services contracts issued under statutory authority.

7.503 Policy.

(a) Contracts shall not be used for the performance of inherently governmental functions.

(b) Agency decisions which determine whether a function is or is not an inherently governmental function may be reviewed and modified by appropriate Office of Management and Budget officials.

(c) The following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such. This list is not all inclusive:

- (1) The direct conduct of criminal investigations.
- (2) The control of prosecutions and performance of adjudicatory functions other than those relating to arbitration or other methods of alternative dispute resolution.
- (3) The command of military forces, especially the leadership of military personnel who are members of the combat, combat support, or combat service support role.
- (4) The conduct of foreign relations and the determination of foreign policy.
- (5) The determination of agency policy, such as determining the content and application of regulations, among other things.
- (6) The determination of Federal program priorities for budget requests.
- (7) The direction and control of Federal employees.
- (8) The direction and control of intelligence and counter-intelligence operations.
- (9) The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.
- (10) The approval of position descriptions and performance standards for Federal employees.

(11) The determination of what Government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

(12) In Federal procurement activities with respect to prime contracts—

(i) Determining what supplies or services are to be acquired by the Government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(ii) Participating as a voting member on any source selection boards;

(iii) Approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria;

(iv) Awarding contracts;

(v) Administering contracts (including ordering changes in contract performance or contract quantities, taking action based on evaluations of contractor performance, and accepting or rejecting contractor products or services);

(vi) Terminating contracts;

(vii) Determining whether contract costs are reasonable, allocable, and allowable; and

(viii) Participating as a voting member on performance evaluation boards.

(13) The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

(14) The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in Government programs.

(15) The approval of Federal licensing actions and inspections.

(16) The determination of budget policy, guidance, and strategy.

(17) The collection, control, and disbursement of fees, royalties, duties, fines, taxes, and other public funds, unless authorized by statute, such as 31 U.S.C. 952 (relating to private collection contractors) and 31 U.S.C. 3718 (relating to private attorney collection services), but not including—

(i) Collection of fees, fines, penalties, costs, or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be collected is easily calculated or predetermined

and the funds collected can be easily controlled using standard case management techniques; and

(ii) Routine voucher and invoice examination.

(18) The control of the treasury accounts.

(19) The administration of public trusts.

(20) The drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity.

(d) The following is a list of examples of functions generally not considered to be inherently governmental functions. However, certain services and actions that are not considered to be inherently governmental functions may approach being in that category because of the nature of the function, the manner in which the contractor performs the contract, or the manner in which the Government administers contractor performance. This list is not all inclusive:

(1) Services that involve or relate to budget preparation, including workload modeling, fact finding, efficiency studies, and should-cost analyses, etc.

(2) Services that involve or relate to reorganization and planning activities.

(3) Services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

(4) Services that involve or relate to the development of regulations.

(5) Services that involve or relate to the evaluation of another contractor's performance.

(6) Services in support of acquisition planning.

(7) Contractors providing assistance in contract management (such as where the contractor might influence official evaluations of other contractors).

(8) Contractors providing technical evaluation of contract proposals.

(9) Contractors providing assistance in the development of statements of work.

(10) Contractors providing support in preparing responses to Freedom of Information Act requests.

(11) Contractors working in any situation that permits or might permit them to gain access to confidential business information and/or any other sensitive information (other than situations covered by the National Industrial Security Program described in 4.402(b)).

(12) Contractors providing information regarding agency policies or regulations, such as attending conferences on behalf of an agency, conducting community relations campaigns, or conducting agency training courses.

(13) Contractors participating in any situation where it might be assumed that they are agency employees or representatives.

(14) Contractors participating as technical advisors to a source selection board or participating as voting or nonvoting members of a source evaluation board.

(15) Contractors serving as arbitrators or providing alternative methods of dispute resolution.

(16) Contractors constructing buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

(17) Contractors providing inspection services.

(18) Contractors providing legal advice and interpretations of regulations and statutes to Government officials.

(19) Contractors providing special non-law enforcement, security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

(e) Agency implementation shall include procedures requiring the agency head or designated requirements official to provide the contracting officer, concurrent with transmittal of the statement of work (or any modification thereof), a written determination that none of the functions to be performed are inherently governmental. This assessment should place emphasis on the degree to which conditions and facts restrict the discretionary authority, decision-making responsibility, or accountability of Government officials using contractor services or work products. Disagreements regarding the determination will be resolved in accordance with agency procedures before issuance of a solicitation.

* * * * *

FAC 2001–09 SEPTEMBER 30, 2002

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

- 8.000 Scope of part.
- 8.001 General.
- 8.002 Priorities for use of Government supply sources.
- 8.003 Use of other Government supply sources.
- 8.004 Contract clause.

Subpart 8.1—Excess Personal Property

- 8.101 Definition.
- 8.102 Policy.
- 8.103 Information on available excess personal property.
- 8.104 Obtaining nonreportable property.

Subpart 8.2—[Reserved]

Subpart 8.3—[Reserved]

Subpart 8.4—Federal Supply Schedules

- 8.401 General.
- 8.402 Applicability.
- 8.403 [Reserved]
- 8.404 Using schedules.
- 8.404-1 [Reserved]
- 8.404-2 [Reserved]
- 8.404-3 [Reserved]
- 8.405 Ordering office responsibilities.
- 8.405-1 [Reserved]
- 8.405-2 Order placement.
- 8.405-3 Inspection and acceptance.
- 8.405-4 Delinquent performance.
- 8.405-5 Termination for default.
- 8.405-6 Termination for convenience.
- 8.405-7 Disputes.

Subpart 8.5—Acquisition of Helium

- 8.500 Scope of subpart.
- 8.501 Definitions.
- 8.502 Policy.
- 8.503 Exception.
- 8.504 Procedures.
- 8.505 Contract clause.

Subpart 8.6—Acquisition from Federal Prison Industries, Inc.

- 8.601 General.
- 8.602 Policy.
- 8.603 Purchase priorities.
- 8.604 Ordering procedures.

- 8.605 Clearances.
- 8.606 Exceptions.

Subpart 8.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

- 8.700 Scope of subpart.
- 8.701 Definitions.
- 8.702 General.
- 8.703 Procurement List.
- 8.704 Purchase priorities.
- 8.705 Procedures.
- 8.705-1 General.
- 8.705-2 Direct-order process.
- 8.705-3 Allocation process.
- 8.705-4 Compliance with orders.
- 8.706 Purchase exceptions.
- 8.707 Prices.
- 8.708 Shipping.
- 8.709 Payments.
- 8.710 Quality of merchandise.
- 8.711 Quality complaints.
- 8.712 Specification changes.
- 8.713 Optional acquisition of supplies and services.
- 8.714 Communications with the central nonprofit agencies and the Committee.
- 8.715 Replacement commodities.
- 8.716 Change-of-name and successor in interest procedures.

Subpart 8.8—Acquisition of Printing and Related Supplies

- 8.800 Scope of subpart.
- 8.801 Definitions.
- 8.802 Policy.

Subpart 8.9—[Reserved]

Subpart 8.10—[Reserved]

Subpart 8.11—Leasing of Motor Vehicles

- 8.1100 Scope of subpart.
- 8.1101 Definitions.
- 8.1102 [Reserved]
- 8.1103 Contract requirements.
- 8.1104 Contract clauses.

This page intentionally left blank.

8.000 Scope of part.

This part deals with the acquisition of supplies and services from or through Government supply sources.

8.001 General.

Regardless of the source of supplies or services to be acquired, information technology acquisitions shall comply with capital planning and investment control requirements.

8.002 Priorities for use of Government supply sources.

(a) Except as required by 8.003, or as otherwise provided by law, agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority—

- (1) *Supplies.* (i) Agency inventories;
- (ii) Excess from other agencies (see Subpart 8.1);
- (iii) Federal Prison Industries, Inc. (see Subpart 8.6);
- (iv) Products available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);
- (v) Wholesale supply sources, such as stock programs of the General Services Administration (GSA) (see 41 CFR 101-26.3), the Defense Logistics Agency (see 41 CFR 101-26.6), the Department of Veterans Affairs (see 41 CFR 101-26.704), and military inventory control points;
- (vi) Mandatory Federal Supply Schedules (see Subpart 8.4);
- (vii) Optional use Federal Supply Schedules (see Subpart 8.4); and
- (viii) Commercial sources (including educational and nonprofit institutions).
- (2) *Services.* (i) Services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see Subpart 8.7);
- (ii) Mandatory Federal Supply Schedules (see Subpart 8.4);
- (iii) Optional use Federal Supply Schedules (see Subpart 8.4); and
- (iv) Federal Prison Industries, Inc. (see Subpart 8.6), or commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used in an unusual and compelling urgency.

(c) The statutory obligation for Government agencies to satisfy their requirements for supplies or services available from the Committee for Purchase From People Who Are Blind or Severely Disabled also applies when contractors purchase the supplies or services for Government use.

8.003 Use of other Government supply sources.

Agencies shall satisfy requirements for the following supplies or services from or through specified sources, as applicable:

- (a) Public utility services (see Part 41);
- (b) Printing and related supplies (see Subpart 8.8);
- (c) Leased motor vehicles (see Subpart 8.11);
- (d) Strategic and critical materials (*e.g.*, metals and ores) from inventories exceeding Defense National Stockpile requirements (detailed information is available from the—

Defense National Stockpile Center
8725 John J. Kingman Rd., Suite 4528
Fort Belvoir, VA 22060-6223; and
- (e) Helium (see Subpart 8.5—Acquisition of Helium).

8.004 Contract clause.

Insert the clause at 52.208-9, Contractor Use of Mandatory Sources of Supply and Services, in solicitations and contracts that require a contractor to provide supplies or services for Government use that are available from the Committee for Purchase From People Who Are Blind or Severely Disabled. The contracting officer shall identify in the contract schedule the supplies or services that shall be purchased from a mandatory source and the specific source.

Subpart 8.1—Excess Personal Property

8.101 Definition.

“Excess personal property” means any personal property (see 45.601) under the control of a Federal agency that the agency head or a designee determines is not required for its needs and for the discharge of its responsibilities.

8.102 Policy.

When practicable, agencies must use excess personal property as the first source of supply for agency and cost-reimbursement contractor requirements. Agency personnel must make positive efforts to satisfy agency requirements by obtaining and using excess personal property (including that suitable for adaptation or substitution) before initiating a contract action.

8.103 Information on available excess personal property.

Information regarding the availability of excess personal property can be obtained through—

- (a) Review of excess personal property catalogs and bulletins issued by the General Services Administration (GSA);
- (b) Personal contact with GSA or the activity holding the property;

(c) Submission of supply requirements to the regional offices of GSA (GSA Form 1539, Request for Excess Personal Property, is available for this purpose); and

(d) Examination and inspection of reports and samples of excess personal property in GSA regional offices.

8.104 Obtaining nonreportable property.

GSA will assist agencies in meeting their requirements for supplies of the types excepted from reporting as excess by the Federal Property Management Regulations (41 CFR 101-43.312). Federal agencies requiring such supplies should contact the appropriate GSA regional office.

Subpart 8.2—[Reserved]

Subpart 8.3—[Reserved]

Subpart 8.4—Federal Supply Schedules

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying (also see 8.002). Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. Similar systems of schedule-type contracting are used for military items managed by the Department of Defense. These systems are not included in the Federal Supply Schedule program covered by this subpart.

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

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

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

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

(d) For administrative convenience, an ordering office contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.*, publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

(2) The ordering office contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

8.403 [Reserved]

8.404 Using schedules.

(a) *General.* (1) Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303-2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)).

(i) Ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs.

(ii) GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government’s needs.

(2) Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (see Subpart 7.1), and an information technology acquisition strategy (see Part 39).

(b) *Ordering procedures for optional use schedules—*
 (1) *Orders at or below the micro-purchase threshold.* Place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor.

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, consider reasonably available information about the

supply or service offered under MAS contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, the ordering office may consider—

- (i) Special features of the supply or service required for effective program performance;
- (ii) Trade-in considerations;
- (iii) Probable life of the item selected as compared with that of a comparable item;
- (iv) Warranty considerations;
- (v) Maintenance availability;
- (vi) Past performance; and
- (vii) Environmental and energy efficiency considerations.

(3) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (b)(2) of this section and before placing an order that exceeds the maximum order threshold—

(i) Review additional schedule contractors' catalogs or pricelists, or use the GSA Advantage! on-line shopping service;

(ii) Based upon the initial evaluation, generally seek price reductions from the schedule contractor(s) appearing to provide the best value (considering price and other factors); and

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). If further price reductions are not offered, an order may still be placed, if the ordering office determines that it is appropriate.

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303-2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs,

regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, women-owned small, and/or small disadvantaged business schedule contractor(s). For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

(7) *Documentation.* Orders should be documented, at a minimum, by identifying the contractor the item was purchased from, the item purchased, and the amount paid. If an agency requirement in excess of the micro-purchase threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs..

8.404-1 [Reserved]

8.404-2 [Reserved]

8.404-3 [Reserved].

8.405 Ordering office responsibilities.

8.405-1 [Reserved]

8.405-2 Order placement.

Ordering offices may use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order items from schedules and shall place orders directly with the contractor within the limitations specified in each schedule. Orders shall include, at a minimum, the following information in addition to any information required by the schedule:

- (a) Complete shipping and billing addresses.
- (b) Contract number and date.
- (c) Agency order number.
- (d) F.o.b. delivery point; *i.e.*, origin or destination.
- (e) Discount terms.
- (f) Delivery time.
- (g) Special item number or national stock number.
- (h) Brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).
 - (i) Quantity and any variation in quantity.

- (j) Number of units.
- (k) Unit price.
- (l) Total price of order.
- (m) Points of inspection and acceptance.
- (n) Other pertinent data; *e.g.*, delivery instructions or receiving hours and size-of-truck limitation.
- (o) Marking requirements.
- (p) Level of preservation, packaging, and packing.

8.405-3 Inspection and acceptance.

(a) Consignees shall inspect supplies at destination except when—

(1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or

(2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).

(b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(c) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

8.405-4 Delinquent performance.

If the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

8.405-5 Termination for default.

(a)(1) An ordering office may terminate any one or more orders for default in accordance with Part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.

(2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as reasonable a price as possible considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [*insert contractor's name*] under Delivery Order _____ [*insert number*] under Contract _____ [*insert number*].

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering office is unable to collect excess costs, it shall take the following actions:

(i) Notify the schedule contracting office within 60 days after final payment to the replacement contractor. The notice shall include the following information about the defaulted order:

- (A) Name and address of the contractor.
- (B) Schedule, contract, and order number.
- (C) National stock or special item number(s), and a brief description of the item(s).
- (D) Cost of schedule items involved.
- (E) Excess costs to be collected.
- (F) Other pertinent data.

(ii) In addition to the above, the notice shall include the following information about the replacement contract:

- (A) Name and address of the contractor.
- (B) Item repurchase cost.
- (C) Repurchase order number and date of payment.
- (D) Contract number, if any.
- (E) Other pertinent data.

(b) Only the schedule contracting officer may terminate for default any or all items covered by the schedule contract. When notified of default action by the schedule contracting officer with respect to defaulted items, ordering offices shall—

- (1) Refuse to accept further performance by the contractor;
- (2) Not place further orders with the contractor;

(3) Repurchase against the contractor in default from sources designated by the schedule contracting officer; or

(4) Proceed as otherwise directed by the schedule contracting officer.

(c) All actions taken regarding terminations for default shall comply with the applicable requirements in Part 49.

8.405-6 Termination for convenience.

(a) Ordering offices may terminate individual orders for the convenience of the Government. Only the schedule contracting officer may terminate any or all items covered by the schedule contract for the convenience of the Government.

(b) Before terminating orders for convenience, the ordering office shall endeavor to enter into a “no cost” cancellation agreement with the contractor.

(c) All actions taken regarding terminations for convenience shall comply with the applicable requirements in Part 49.

8.405-7 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering office contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering office contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering office contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to the GPO Board of Contract Appeals.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

Subpart 8.5—Acquisition of Helium

8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167, *et seq.*) concerning the acquisition of liquid or gaseous helium by Federal agencies or by Government contractors or subcontractors for use in the performance of a Government contract (also see 43 CFR part 3195).

8.501 Definitions.

As used in this subpart—

“Bureau of Land Management” means the—

Department of the Interior
Bureau of Land Management
Amarillo Field Office
Helium Operations
801 South Fillmore Street
Suite 500
Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute

pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

8.502 Policy.

Agencies and their contractors and subcontractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

8.503 Exception.

The requirements of this subpart do not apply to contracts or subcontracts in which the helium was acquired by the contractor prior to award of the contract or subcontract.

8.504 Procedures.

The contracting officer must forward the following information to the Bureau of Land Management within 45 days of the close of each fiscal quarter:

- (a) The name of any company that supplied a major helium requirement.
- (b) The amount of helium purchased.
- (c) The delivery date(s).
- (d) The location where the helium was used.

8.505 Contract clause.

Insert the clause at 52.208-8, Required Sources for Helium and Helium Usage Data, in solicitations and contracts if it is anticipated that performance of the contract involves a major helium requirement.

Subpart 8.6—Acquisition from Federal Prison Industries, Inc.

Federal Prison Industries, Inc.
 Department of Justice
 Washington, DC 20534.

8.601 General.

(a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia.

(b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies (18 U.S.C. 4121-4128).

(c) FPI diversifies its supplies and services to prevent private industry from experiencing unfair competition from prison workshops or activities.

8.602 Policy.

(a) Agencies shall purchase required supplies of the classes listed in the Schedule of Products made in Federal Penal and Correctional Institutions (referred to in this subpart as “the Schedule”) at prices not to exceed current market prices, using the procedures in this subpart.

(b) Subject to the priorities in 8.002 and 8.603, agencies are encouraged to use the facilities of FPI to the maximum extent practicable in purchasing—

(1) Supplies that are not listed in the Schedule, but that are of a type manufactured in Federal penal and correctional institutions; and

(2) Services that are listed in the Schedule.

(c) If a supply not listed in the Schedule is of a type normally produced by Federal penal and correctional institutions, agencies are encouraged to suggest that FPI consider the feasibility of adding the item to its Schedule.

8.603 Purchase priorities.

(a) FPI and nonprofit agencies participating in the Javits-Wagner-O'Day (JWOD) Program (see Subpart 8.7) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(1) *Supplies.* (i) Federal Prison Industries, Inc. (41 U.S.C. 48).

(ii) JWOD participating nonprofit agencies.

(iii) Commercial sources.

(2) *Services.* (i) JWOD participating nonprofit agencies.

(ii) Federal Prison Industries, Inc., or commercial sources.

(b) Supplies and services manufactured or performed by FPI are in strict conformity with Federal Specifications. These supplies and services are listed in the Schedule. Copies of the Schedule are available from—

8.604 Ordering procedures.

(a) Contracting officers shall order—

(1) Less-than-carload lots of common-use items (Schedule A of the Schedule) from the regional warehouses of GSA, unless it is more practical and economical to purchase directly from FPI; and

(2) Carload lots of common-use items, and other items listed in the Schedule, from FPI.

(b) Contracting officers shall prepare orders to FPI using the procedures in the Schedule.

(c) When the contracting officer believes that the FPI price exceeds the market price, the matter may be referred to the cognizant product division identified in the Schedule or to the FPI Washington office for resolution.

8.605 Clearances.

(a) Clearance is required from FPI before supplies on the Schedule are acquired from other sources, except when the conditions in 8.606 apply. FPI clearances ordinarily are of the following types:

(1) General or blanket clearances issued when classes of articles or services are not available from FPI.

(2) Formal clearances issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the Schedule and not covered by a general clearance. Requests should be addressed to—

Federal Prison Industries, Inc.
 Department of Justice
 Washington, DC 20534.

(b) Purchases from other sources because of a lower price are not normally authorized, and clearances will not be issued on this basis except as a result of action taken to resolve questions of price under 8.604(c).

(c) Disputes regarding price, quality, character, or suitability of supplies produced by FPI are subject to arbitration as specified in 18 U.S.C. 4124. The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

8.606 Exceptions.

FPI clearances are not required when—

(a) Public exigency requires immediate delivery or performance;

(b) Suitable used or excess supplies are available;

(c) Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);

(d) The supplies are acquired and used outside the United States; or

(e) Orders are for listed items totaling \$25 or less that require delivery within 10 days.

Subpart 8.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c), referred to in this subpart as “the JWOD Act,” and the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51).

8.701 Definitions.

As used in this subpart—

“Allocation” means an action taken by a central nonprofit agency to designate the JWOD participating nonprofit agencies that will furnish definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

“Central nonprofit agency” means National Industries for the Blind (NIB), which has been designated to represent people who are blind; or NISH, which has been designated to represent JWOD participating nonprofit agencies serving people with severe disabilities other than blindness.

“Committee” means the Committee for Purchase from People Who Are Blind or Severely Disabled.

“Government” or “entity of the Government” means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

“Ordering office” means any activity in an entity of the Government that places orders for the purchase of supplies or services under the JWOD Program.

“Procurement List” means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the Javits-Wagner-O'Day Act.

“Nonprofit agency serving people who are blind” or “nonprofit agency serving people with other severe disabilities” (referred to jointly as JWOD participating nonprofit agencies) means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under the Act.

8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from JWOD participating nonprofit agencies;

(b) Establishing prices for the supplies and services; and
(c) Establishing rules and regulations to implement the JWOD Act.

8.703 Procurement List.

The Committee maintains a Procurement List of all supplies and services required to be purchased from JWOD participating nonprofit agencies. Questions concerning whether a supply item or service is on the Procurement List should be referred to the Committee offices at the following address and telephone number:

Committee for Purchase from People Who Are Blind or Severely Disabled
Crystal Square 3, Room 403
1735 Jefferson Davis Highway
Arlington, VA 22202-3461
(703) 603-7740.

Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog and GSA's Customer Service Center Catalogs with a black square and the words “NIB/NISH Mandatory Source,” and in similar catalogs issued by the Defense Logistics Agency (DLA) and the Department of Veterans Affairs (VA). GSA, DLA, and VA are central supply agencies from which other Federal agencies are required to purchase certain supply items on the Procurement List.

8.704 Purchase priorities.

(a) The JWOD Act requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from JWOD participating nonprofit agencies if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

- (i) Federal Prison Industries, Inc. (41 U.S.C. 48).
- (ii) JWOD participating nonprofit agencies.
- (iii) Commercial sources.

(2) Services:

- (i) JWOD participating nonprofit agencies.
- (ii) Federal Prison Industries, Inc., or commercial sources.

(b) No other provision of the MMAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal clearance (8.605) from Federal Prison Industries, Inc., before making any purchases from JWOD participating nonprofit agencies.

8.705 Procedures.**8.705-1 General.**

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated JWOD participating nonprofit agencies, except that supplies identified on the Procurement List as available from DLA, GSA, or VA supply distribution facilities shall be obtained through DLA, GSA, or VA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the JWOD participating nonprofit agency designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated JWOD participating nonprofit agency.

8.705-2 Direct-order process.

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to a JWOD participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The ordering office shall reflect this lead time in its orders.

8.705-3 Allocation process.

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the JWOD participating nonprofit agency to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the nonprofit agency to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; *e.g.*, packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified JWOD participating nonprofit agency or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the allo-

cation, or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; *e.g.*, on the handling of Government-furnished property, reports required, and notification of shipment.

8.705-4 Compliance with orders.

(a) The central nonprofit agency shall inform the ordering office of changes in lead time experienced by its JWOD participating nonprofit agencies to minimize requests for extension once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or JWOD participating nonprofit agency for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When a JWOD participating nonprofit agency fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the nonprofit agency involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the nonprofit agency, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with 8.705-4(c), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is \$25,000 or more.

8.706 Purchase exceptions.

(a) Ordering offices may acquire supplies or services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The JWOD participating nonprofit agencies cannot provide the supplies or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or

(2) The quantity required cannot be produced or provided economically by the JWOD participating nonprofit agencies.

(c) The central nonprofit agency granting the exception shall specify the quantity and delivery or performance period covered by the exception.

(d) When a purchase exception is granted, the contracting officer shall—

(1) Initiate purchase action within 15 days following the date of the exception or any extension granted by the central nonprofit agency; and

(2) Provide a copy of the solicitation to the central nonprofit agency when it is issued.

(e) The Committee may also grant a purchase exception, under any circumstances it considers appropriate.

8.707 Prices.

(a) The prices of items on the Procurement List are fair market prices established by the Committee. All prices for supplies ordered under this subpart are f.o.b. origin.

(b) Prices for supplies are normally adjusted semiannually. Prices for services are normally adjusted annually.

(c) The Committee may request the agency responsible for acquiring the supplies or service to assist it in establishing or revising the fair market price. The Committee has the authority to establish prices without prior coordination with the responsible contracting office.

(d) Price changes shall normally apply to all orders received by the JWOD participating nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the ordering office, the Committee may make price changes applicable to orders received by the JWOD participating nonprofit agency prior to the effective date of the change.

(e) If an ordering office desires packing, packaging, or marking of supplies other than the standard pack as provided on the Procurement List, any difference in costs shall be included as a separate item on the nonprofit agency's invoice. The ordering office shall reimburse the nonprofit agency for these costs.

(f) Ordering offices may make recommendations to the Committee at any time for price revisions for supplies and services on the Procurement List.

8.708 Shipping.

(a) Delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. The time of delivery is the date shipment is released to and accepted by the initial carrier.

(b) Shipment is normally under Government bills of lading. However, for small orders, ordering offices may specify other shipment methods.

(c) When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished promptly. Failure of an ordering office to furnish bills of lading or to designate a method of transportation may result in an excusable delay in delivery.

(d) JWOD participating nonprofit agencies shall include transportation costs for small shipments paid by the nonprofit agencies as an item on the invoice. The ordering office shall reimburse the nonprofit agencies for these costs.

8.709 Payments.

The ordering office shall make payments for supplies or services on the Procurement List within 30 days after shipment or after receipt of a proper invoice or voucher.

8.710 Quality of merchandise.

Supplies and services provided by JWOD participating nonprofit agencies shall comply with the applicable Government specifications and standards cited in the order. When no specifications or standards exist—

(a) Supplies shall be of the highest quality and equal to similar items available on the commercial market; and

(b) Services shall conform to good commercial practices.

8.711 Quality complaints.

(a) When the quality of supplies or services received is unsatisfactory, the using activity shall take the following actions:

(1) For supplies received from DLA supply centers, GSA supply distribution facilities, or Department of Veterans Affairs distribution division, notify the supplying agency.

(2) For supplies or services received from JWOD participating nonprofit agencies, address complaints to the individual nonprofit agency involved, with a copy to the appropriate central nonprofit agency.

(b) When quality problems cannot be resolved by the JWOD participating nonprofit agency and the ordering office, the ordering office shall first contact the central nonprofit agency and then, if necessary, the Committee for resolution.

8.712 Specification changes.

(a) The contracting activity shall notify the JWOD participating nonprofit agency and appropriate central nonprofit agency of any change in specifications or descriptions. In the absence of such written notification, the JWOD participating nonprofit agency shall furnish the supplies or services under the specification or description cited in the order.

(b) The contracting activity shall provide 90-days advance notification to the Committee and the central nonprofit agency on actions that affect supplies on the Procure-

ment List and shall permit them to comment before action is taken, particularly when it involves—

- (1) Changes that require new national stock numbers or item designations;
- (2) Deleting items from the supply system;
- (3) Standardization; or
- (4) Developing new items to replace items on the Procurement List.

(c) For services, the contracting activity shall notify the JWOD participating nonprofit agency and central nonprofit agency concerned at least 90 days prior to the date that any changes in the scope of work or other conditions will be required.

(d) When, in order to meet its emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the JWOD participating nonprofit agency and the central nonprofit agency in writing of the reasons that it cannot meet the 90-day notification requirement.

8.713 Optional acquisition of supplies and services.

(a) Ordering offices may acquire supplies and services not included on the Procurement List from a JWOD participating nonprofit agency that is the low responsive, responsible offeror under a solicitation issued by other authorized acquisition methods.

(b) Ordering offices should forward solicitations to JWOD participating nonprofit agencies that may be qualified to provide the supplies or services required.

8.714 Communications with the central nonprofit agencies and the Committee.

(a) The addresses of the central nonprofit agencies are:

- (1) National Industries for the Blind
1901 N. Beauregard St., Suite 200
Alexandria, VA 22311-1727
(703) 998-0770; and

- (2) NIMSH
2235 Cedar Lane
Vienna, VA 22182-5200
(703) 560-6800.

(b) Any matter requiring referral to the Committee shall be addressed to the—

- Executive Director of the Committee
1735 Jefferson-Davis Highway
Crystal Square 3, Suite 403
Arlington, VA 22202-3461.

8.715 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously acquired, and a qualified JWOD participating nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules and at a fair market price, the replacement commodity is automatically on the Procurement List and shall be acquired from the JWOD participating nonprofit agency designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

8.716 Change-of-name and successor in interest procedures.

When the Committee recognizes a name change or a successor in interest for a JWOD participating nonprofit agency providing supplies or services on the Procurement List—

(a) The Committee will provide a notice of a change to the Procurement List to the cognizant contracting officers; and

(b) Upon receipt of a notice of a change to the Procurement List from the Committee, the contracting officer must—

- (1) Prepare a Standard Form (SF) 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the notice and attaching a list of contracts affected; and
- (2) Distribute the SF 30, including a copy to the Committee.

Subpart 8.8—Acquisition of Printing and Related Supplies

8.800 Scope of subpart.

This subpart provides policy for the acquisition of Government printing and related supplies.

8.801 Definitions.

As used in this subpart—

“Government printing” means printing, binding, and blankbook work for the use of an executive department, independent agency, or establishment of the Government.

“Related supplies” means supplies that are used and equipment that is usable in printing and binding operations.

8.802 Policy.

(a) Government printing must be done by or through the Government Printing Office (GPO) (44 U.S.C. 501), unless—

(1) The GPO cannot provide the printing service (44 U.S.C. 504);

(2) The printing is done in field printing plants operated by an executive agency (44 U.S.C. 501(2));

(3) The printing is acquired by an executive agency from allotments for contract field printing (44 U.S.C. 501(2)); or

(4) The printing is specifically authorized by statute to be done other than by the GPO.

(b) The head of each agency shall designate a central printing authority; that central printing authority may serve as the liaison with the Congressional Joint Committee on Printing (JCP) and the Public Printer on matters related to printing. Contracting officers shall obtain approval from their designated central printing authority before contracting in any manner, whether directly or through contracts for supplies or services, for the items defined in 8.801 and for composition, platemaking, presswork, binding, and micrographics (when used as a substitute for printing).

(c)(1) Further, 44 U.S.C. 1121 provides that the Public Printer may acquire and furnish paper and envelopes (excluding envelopes printed in the course of manufacture) in common use by two or more Government departments, establishments, or services within the District of Columbia, and provides for reimbursement of the Public Printer from available appropriations or funds. Paper and envelopes that are furnished by the Public Printer may not be acquired in any other manner.

(2) Paper and envelopes for use by Executive agencies outside the District of Columbia and stocked by GSA shall be requisitioned from GSA in accordance with the procedures listed in Federal Property Management Regulations (FPMR) Subpart 101-26.3.

Subpart 8.9—[Reserved]

Subpart 8.10—[Reserved]

Subpart 8.11—Leasing of Motor Vehicles

8.1100 Scope of subpart.

This subpart covers the procedures for the leasing, from commercial concerns, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States.

8.1101 Definitions.

As used in this subpart—

“Leasing” means the acquisition of motor vehicles, other than by purchase from private or commercial sources, and includes the synonyms “hire” and “rent.”

“Motor vehicle” means an item of equipment, mounted on wheels and designed for highway and/or land use, that —

- (1) Derives power from a self-contained power unit; or
- (2) Is designed to be towed by and used in conjunction with self-propelled equipment.

8.1102 [Reserved]

8.1103 Contract requirements.

Contracting officers shall include the following items in each contract for leasing motor vehicles:

- (a) Scope of contract.
- (b) Method of computing payments.
- (c) A listing of the number and type of vehicles required, and the equipment and accessories to be provided with each vehicle.

(d) Responsibilities of the contractor or the Government for furnishing gasoline, motor oil, antifreeze, and similar items.

(e) Unless it is determined that it will be more economical for the Government to perform the work, a statement that the contractor shall perform all maintenance on the vehicles.

(f) A statement as to the applicability of pertinent State and local laws and regulations, and the responsibility of each party for compliance with them.

(g) Responsibilities of the contractor or the Government for emergency repairs and services.

8.1104 Contract clauses.

The contracting officer shall insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries:

- (a) The clause at 52.208-4, Vehicle Lease Payments.
- (b) The clause at 52.208-5, Condition of Leased Vehicles.
- (c) The clause at 52.208-6, Marking of Leased Vehicles.
- (d) A clause substantially the same as the clause at 52.208-7, Tagging of Leased Vehicles, for vehicles leased over 60 days (see 41 CFR 101-38.6).
- (e) The provisions and clauses prescribed elsewhere in the MMAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding—
 - (1) The clause at 52.211-16, Variation in Quantity;
 - (2) The clause at 52.232-1, Payments;
 - (3) The clause at 52.222-20, Walsh-Healey Public Contracts Act; and
 - (4) The clause at 52.246-16, Responsibility for Supplies.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

Sec.

9.000	Scope of part.		
	Subpart 9.1—Responsible Prospective Contractors		Subpart 9.4—Debarment, Suspension, and Ineligibility
9.100	Scope of subpart.	9.400	Scope of subpart.
9.101	Definition.	9.401	[Reserved]
9.102	Applicability.	9.402	[Reserved]
9.103	Policy.	9.403	[Reserved]
9.104	Standards.	9.404	[Reserved]
9.104-1	General standards.	9.405	[Reserved]
9.104-2	Special standards.	9.405-1	[Reserved]
9.104-3	Application of standards.	9.405-2	[Reserved]
9.104-4	Subcontractor responsibility.	9.406	[Reserved]
9.105	Procedures	9.406-1	[Reserved]
9.105-1	Obtaining information.	9.406-2	[Reserved]
9.105-2	Determinations and documentation.	9.406-3	[Reserved]
9.105-3	Disclosure of preaward information.	9.406-4	[Reserved]
9.106	Preaward surveys.	9.406-5	[Reserved]
9.106-1	Conditions for preaward surveys.	9.407	[Reserved]
9.106-2	Requests for preaward surveys.	9.407-1	[Reserved]
9.106-3	Interagency preaward surveys.	9.407-2	[Reserved]
9.106-4	Reports.	9.407-3	[Reserved]
9.107	Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.	9.407-4	[Reserved]
	Subpart 9.2—Qualifications Requirements	9.407-5	[Reserved]
9.200	Scope of subpart.	9.408	Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
9.201	Definitions.	9.409	Solicitation provision and contract clause.
9.202	Policy.		Subpart 9.5—Organizational and Consultant Conflicts of Interest
9.203	QPL's, QML's, and QBL's.	9.500	Scope of subpart.
9.204	Responsibilities for establishment of a qualification requirement.	9.501	Definition.
9.205	Opportunity for qualification before award.	9.502	Applicability.
9.206	Acquisitions subject to qualification requirements.	9.503	Waiver.
9.206-1	General.	9.504	Contracting officer responsibilities.
9.206-2	Contract clause.	9.505	General rules.
9.206-3	Competition.	9.505-1	Providing systems engineering and technical direction.
9.207	Changes in status regarding qualification requirements.	9.505-2	Preparing specifications or work statements.
	Subpart 9.3—First Article Testing and Approval	9.505-3	Providing evaluation services.
9.301	Definition.	9.505-4	Obtaining access to proprietary information.
9.302	General.	9.506	Procedures.
9.303	Use.	9.507	Solicitation provisions and contract clause.
9.304	Exceptions.	9.507-1	Solicitation provisions.
9.305	Risk.	9.507-2	Contract clause.
9.306	Solicitation requirements.	9.508	Examples.
9.307	Government administration procedures.		Subpart 9.6—Contractor Team Arrangements
9.308	Contract clauses.	9.601	Definition.
9.308-1	Testing performed by the contractor.	9.602	General.
9.308-2	Testing performed by the Government.	9.603	Policy.
		9.604	Limitations.

	Subpart 9.7—Defense Production Pools and Research and Development Pools	9.702	Contracting with pools.
		9.703	Contracting with individual pool members.
9.701	Definition.		

9.000 Scope of part.

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

Subpart 9.1—Responsible Prospective Contractors

9.100 Scope of subpart.

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

9.101 Definition.

"Surveying activity," as used in this subpart, means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

9.102 Applicability.

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

- (1) In the United States, its possessions, or Puerto Rico; or
- (2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with—

- (1) Foreign, State, or local governments;
- (2) Other U.S. Government agencies or their instrumentalities; or
- (3) Agencies for the blind or other severely handicapped (see Subpart 8.7).

9.103 Policy.

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility.

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory performance resulting in additional contractual or administrative costs. While it is important that Government purchases be

made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

9.104 Standards.

9.104-1 General standards.

To be determined responsible, a prospective contractor must—

- (a) Have adequate financial resources to perform the contract, or the ability to obtain them (see 9.104-3(a));
- (b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;
- (c) Have a satisfactory performance record (see 9.104-3(b) and Subpart 42.15). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in 9.104-2;
- (d) Have a satisfactory record of integrity and business ethics.
- (e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See 9.104-3(a).)
- (f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see 9.104-3(a)); and
- (g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations.

9.104-2 Special standards.

(a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in 9.104-1 and are approved in accordance with agency sanitation standards and procedures.

9.104-3 Application of standards.

(a) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see 9.104-1(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination.

(c) *Affiliated concerns.* Affiliated concerns (see "Concern" in 19.001 and "Affiliates" in 19.101) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

9.104-4 Subcontractor responsibility.

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors (but see 9.405 and 9.405-2 regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (*e.g.*, when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards

used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

9.105 Procedures**9.105-1 Obtaining information.**

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in 9.104.

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary (see 9.106), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning—

- (i) The low bidder; or
- (ii) Those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility (see 9.104-1(c)), the contracting officer shall consider relevant past performance information (see Subpart 42.15). In addition, the contracting officer should use the following sources of information to support such determinations:

(1) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs maintained in accordance with Subpart 9.4 and the list of suspended & debarred GPO contractors maintained pursuant to GPO Instruction 110.11B.

(2) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(3) The prospective contractor—including bid or proposal information, questionnaire replies, financial data, information on production equipment, and personnel information.

(4) Commercial sources of supplier information of a type offered to buyers in the private sector.

(5) Preaward survey reports (see 9.106).

(6) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor; financial institutions; Government agencies; and business and trade associations.

(7) If the contract is for construction, the contracting officer may consider performance evaluation reports (see 36.201(c)(2)).

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be nonresponsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(b) *Support documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports, must be included in the contract file.

9.105-3 Disclosure of preaward information.

(a) Except as provided in Subpart 24.2, Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary or source selection information and should be marked with the appropriate legend and protected accordingly (see 3.104-4).

9.106 Preaward surveys.

9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibility. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see Part 12), the contracting officer should not request a preaward survey unless circumstances justify its cost.

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see Subpart 9.4). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

9.106-2 Requests for preaward surveys.

The contracting officer's request to the surveying activity (Preaward Survey of Prospective Contractor (General), SF 1403) shall—

(a) Identify additional factors about which information is needed;

(b) Include the complete solicitation package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the contracting office will participate in the survey;

(d) Specify the date by which the report is required. This date should be consistent with the scope of the survey requested and normally shall allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

9.106-3 Interagency preaward surveys.

When the contracting office and the surveying activity are in different agencies, the procedures of this section 9.106 and Subpart 42.1 shall be followed along with the regulations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated.

9.106-4 Reports.

(a) The surveying activity shall complete the applicable parts of SF 1403, Preaward Survey of Prospective Contractor (General); SF 1404, Preaward Survey of Prospective Contractor—Technical; SF 1405, Preaward Survey of Prospective Contractor—Production; SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance; SF 1407, Preaward Survey of Prospective Contractor—Financial Capability; and SF 1408, Preaward Survey of Prospective Contractor—Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (*e.g.*, engineering, inspection, or testing) provided in the Government's interest but not contractually required.

(c) When the surveying activity possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the surveying activity may provide a short-form preaward survey report. The short-form report shall consist solely of the Preaward Survey of Prospective Contractor (General), SF 1403. Sections III and IV of this form shall be completed and block 21 shall be checked to show that the report is a short-form preaward report.

9.107 Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by 41 U.S.C. 46-48c, determines what supplies and services Federal agencies are required to purchase from JWOD participating nonprofit agencies serving people who are blind or have other severe disabilities (see Subpart 8.7). The Committee is required to find a JWOD participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the JWOD Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the JWOD participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey elements to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the Standard Form 1403 to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the JWOD participating nonprofit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

Subpart 9.2—Qualifications Requirements

9.200 Scope of subpart.

This subpart prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

9.201 Definitions.

As used in this subpart—

“Qualified bidders list (QBL)” means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

“Qualified manufacturers list (QML)” means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

(2) Upon request to the contracting activity, potential offerors shall be provided—

(i) All requirements that they or their products must satisfy to become qualified; and

(ii) At their expense (but see 9.204(a)(2) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through inter-agency agreements or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency).

(3) If the services in (a)(2)(ii) of this section are provided by contract, the contractors selected to provide testing and evaluation services shall be—

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on technical data asserted by the potential offeror seeking qualification.

(4) A potential offeror seeking qualification shall be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the competition advocate for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the competition advocate reviewing the determination, the head of the procuring activity may waive the requirements of 9.202(a)(1)(ii) through (4) for up to 2 years with respect to the item subject to the qualification requirement. A copy of the waiver shall be furnished to the head of the agency or other official responsible for actions under 9.202(a)(1). The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.

(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DOD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a qualification requirement established after October 19, 1984, by DOD or NASA; or

(3) Has not been identified as meeting a qualification requirement established by a civilian agency (not including NASA).

(d) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a procurement need not be delayed in order to comply with 9.202(a).

(e) Within 7 years following enforcement of a QPL, QML, or QBL by DOD or NASA, or within 7 years after any qualification requirement was originally established by a civilian agency other than NASA, the qualification requirement shall be examined and revalidated in accordance with the requirements of 9.202(a). Any periods for which a waiver under 9.202(b) is in effect shall be excluded in com-

puting the 7 years within which review and revalidation must occur.

9.203 QPL's, QML's, and QBL's.

(a) Qualification and listing in a QPL, QML, or QBL is the process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, or manufacturers or potential offerors, are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a Federal or Military QPL, QML, or QBL. (See 9.202(a)(2) with regard to any product, manufacturer, or potential offeror not yet included on an applicable list.)

(b) Specifications requiring a qualified product are included in the following publications:

(1) GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.1.

(2) Department of Defense Index of Specifications and Standards.

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Manual, FSPM-0001.

(2) Defense Standardization Manual 4120.24-M, Appendix 2, as amended by Military Standards 961 and 962.

(d) The publications listed in paragraphs (b) and (c) of this section are sold to the public. The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the addressee in 11.201(d)(1). The publications in paragraphs (b)(2) and (c)(2) of this section may be obtained from the addressee in 11.201(d)(2).

9.204 Responsibilities for establishment of a qualification requirement.

The responsibilities of agency activities that establish qualification requirements include the following:

(a) Arranging publicity for the qualification requirements. If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or the products of two manufacturers, the activity responsible for establishment of the qualification requirements must—

(1) Periodically furnish through the Governmentwide point of entry (GPE) a notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security.

(2) Bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. However, such costs may be borne only if it is determined in accordance with agency procedures that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements.

(b) Qualifying products that meet specification requirements.

(c) Listing manufacturers and suppliers whose products are qualified in accordance with agency procedures.

(d) Furnishing QPL's, QML's, or QBL's or the qualification requirements themselves to prospective offerors and the public upon request (see 9.202(a)(2)(i)).

(e) Clarifying, as necessary, qualification requirements.

(f) In appropriate cases, when requested by the contracting officer, providing concurrence in a decision not to enforce a qualification requirement for a solicitation.

(g) Withdrawing or omitting qualification of a listed product, manufacturer or offeror, as necessary.

(h) Advising persons furnished any list of products, manufacturers or offerors meeting a qualification requirement and suppliers whose products are on any such list that—

(1) The list does not constitute endorsement of the product, manufacturer, or other source by the Government;

(2) The products or sources listed have been qualified under the latest applicable specification;

(3) The list may be amended without notice;

(4) The listing of a product or source does not release the supplier from compliance with the specification; and

(5) Use of the list for advertising or publicity is permitted. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that the Government in any way recommends or endorses the products or the sources listed.

(i) Reexamining a qualified product or manufacturer when—

(1) The manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of previous qualification is questionable;

(2) The requirements in the specification have been amended or revised sufficiently to affect the character of the product; or

(3) It is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification.

9.205 Opportunity for qualification before award.

(a) If an agency determines that a qualification requirement is necessary, the agency activity responsible for establishing the requirement must urge manufacturers and other potential sources to demonstrate their ability to meet the standards specified for qualification and, when possible, give sufficient time to arrange for qualification before award. The responsible agency activity must, before establishing any qualification requirement, furnish notice through the GPE. The notice must include—

- (1) Intent to establish a qualification requirement;
- (2) The specification number and name of the product;
- (3) The name and address of the activity to which a request for the information and opportunity described in 9.202(a)(2) should be submitted;
- (4) The anticipated date that the agency will begin awarding contracts subject to the qualification requirement;
- (5) A precautionary notice that when a product is submitted for qualification testing, the applicant must furnish any specific information that may be requested of the manufacturer before testing will begin; and
- (6) The approximate time period following submission of a product for qualification testing within which the applicant will be notified whether the product passed or failed the qualification testing (see 9.202(a)(4)).

(b) The activity responsible for establishing a qualification requirement must keep any list maintained of those already qualified open for inclusion of additional products, manufacturers, or other potential sources, including eligible products from designated countries under the terms of the Trade Agreements Act (see Subpart 25.4).

9.206 Acquisitions subject to qualification requirements.

9.206-1 General.

(a) Agencies may not enforce any QPL, QML, or QBL without first complying with the requirements of 9.202(a). However, qualification requirements themselves, whether or not previously embodied in a QPL, QML, or QBL, may be enforced without regard to 9.202(a) if they are in either of the following categories:

- (1) Any qualification requirement established by statute prior to October 30, 1984, for civilian agencies (not including NASA); or
- (2) Any qualification requirement established by statute or administrative action prior to October 19, 1984, for DOD or NASA. Qualification requirements established after the above dates must comply with 9.202(a) to be enforceable.

(b) Except when the Public Printer or designee determines that an emergency exists, whenever an agency elects, whether before or after award, not to enforce a qualification requirement which it established, the requirement may not thereafter be enforced unless the agency complies with 9.202(a).

(c) If a qualification requirement applies, the contracting officer need consider only those offers identified as meeting the requirement or included on the applicable QPL, QML, or QBL, unless an offeror can satisfactorily demonstrate to the contracting officer that it or its product or its subcontractor or its product can meet the standards established for qualification before the date specified for award.

(d) If a product subject to a qualification requirement is to be acquired as a component of an end item, the contracting officer must ensure that all such components and their qualification requirements are properly identified in the solicitation since the product or source must meet the standards specified for qualification before award.

(e) In acquisitions subject to qualification requirements, the contracting officer shall take the following steps:

(1) Use presolicitation notices in appropriate cases to advise potential suppliers before issuing solicitations involving qualification requirements. The notices shall identify the specification containing the qualification requirement and establish an allowable time period, consistent with delivery requirements, for prospective offerors to demonstrate their abilities to meet the standards specified for qualification. The notice shall be publicized in accordance with 5.204. Whether or not a presolicitation notice is used, the general synopsis requirements of Subpart 5.2 apply.

(2) Distribute solicitations to prospective contractors whether or not they have been identified as meeting applicable qualification requirements.

(3) When appropriate, request in accordance with agency procedures that a qualification requirement not be enforced in a particular acquisition and, if granted, so specify in the solicitation (see 9.206-1(b)).

(4) Forward requests from potential suppliers for information on a qualification requirement to the agency activity responsible for establishing the requirement.

(5) Allow the maximum time, consistent with delivery requirements, between issuing the solicitation and the contract award. As a minimum, contracting officers shall comply with the time frames specified in 5.203 when applicable.

9.206-2 Contract clause.

The contracting officer shall insert the clause at 52.209-1, Qualification Requirements, in solicitations and contracts when the acquisition is subject to a qualification requirement.

9.206-3 Competition.

(a) *Presolicitation.* If a qualification requirement applies to an acquisition, the contracting officer shall review the applicable QPL, QML, or QBL or other identification of those sources which have met the requirement before issuing a solicitation to ascertain whether the number of sources is adequate for competition. (See 9.204(a) for duties of the agency activity responsible for establishment of the qualification requirement.) If the number of sources is inadequate, the contracting officer shall request the agency activity which established the requirement to—

(1) Indicate the anticipated date on which any sources presently undergoing evaluation will have demonstrated their abilities to meet the qualification requirement so that the solicitation could be rescheduled to allow as many additional sources as possible to qualify; or

(2) Indicate whether a means other than the qualification requirement is feasible for testing or demonstrating quality assurance.

(b) *Post solicitation.* The contracting officer shall submit to the agency activity which established the qualification requirement the names and addresses of concerns which expressed interest in the acquisition but are not included on the applicable QPL, QML, or QBL or identified as meeting the qualification requirement. The activity will then assist interested concerns in meeting the standards specified for qualification (see 9.202(a)(2) and (4)).

9.207 Changes in status regarding qualification requirements.

(a) The contracting officer shall promptly report to the agency activity which established the qualification requirement any conditions which may merit removal or omission from a QPL, QML, or QBL or affect whether a source should continue to be otherwise identified as meeting the requirement. These conditions exist when—

(1) Products or services are submitted for inspection or acceptance that do not meet the qualification requirement;

(2) Products or services were previously rejected and the defects were not corrected when submitted for inspection or acceptance;

(3) A supplier fails to request reevaluation following change of location or ownership of the plant where the product which met the qualification requirement was manufactured (see the clause at 52.209-1, Qualification Requirements);

(4) A manufacturer of a product which met the qualification requirement has discontinued manufacture of the product;

(5) A source requests removal from a QPL, QML, or QBL;

(6) A condition of meeting the qualification requirement was violated; *e.g.*, advertising or publicity contrary to 9.204(h)(5);

(7) A revised specification imposes a new qualification requirement;

(8) Manufacturing or design changes have been incorporated in the qualification requirement;

(9) The source is on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see Subpart 9.4); or

(10) Performance of a contract subject to a qualification requirement is otherwise unsatisfactory.

(b) After considering any of the above or other conditions reasonably related to whether a product or source continues to meet the standards specified for qualification, an agency may take appropriate action without advance notification.

The agency shall, however, promptly notify the affected parties if a product or source is removed from a QPL, QML, or QBL, or will no longer be identified as meeting the standards specified for qualification. This notice shall contain specific information why the product or source no longer meets the qualification requirement.

Subpart 9.3—First Article Testing and Approval

9.301 Definition.

“Approval,” as used in this subpart, means the contracting officer’s written notification to the contractor accepting the test results of the first article.

9.302 General.

First article testing and approval (hereafter referred to as testing and approval) ensures that the contractor can furnish a product that conforms to all contract requirements for acceptance. Before requiring testing and approval, the contracting officer shall consider the—

- (a) Impact on cost or time of delivery;
- (b) Risk to the Government of foregoing such test; and
- (c) Availability of other, less costly, methods of ensuring the desired quality.

9.303 Use.

Testing and approval may be appropriate when—

- (a) The contractor has not previously furnished the product to the Government;
- (b) The contractor previously furnished the product to the Government, but—
 - (1) There have been subsequent changes in processes or specifications;
 - (2) Production has been discontinued for an extended period of time; or
 - (3) The product acquired under a previous contract developed a problem during its life;
- (c) The product is described by a performance specification; or
- (d) It is essential to have an approved first article to serve as a manufacturing standard.

9.304 Exceptions.

Normally, testing and approval is not required in contracts for—

- (a) Research or development;
- (b) Products requiring qualification before award (*e.g.*, when an applicable qualified products list exists (see Subpart 9.2));
- (c) Products normally sold in the commercial market; or
- (d) Products covered by complete and detailed technical specifications, unless the requirements are so novel or exacting that it is questionable whether the products would meet the requirements without testing and approval.

9.305 Risk.

Before first article approval, the acquisition of materials or components, or commencement of production, is nor-

mally at the sole risk of the contractor. To minimize this risk, the contracting officer shall provide sufficient time in the delivery schedule for acquisition of materials and components, and for production after receipt of first article approval. When Government requirements preclude this action, the contracting officer may, before approval of the first article, authorize the contractor to acquire specific materials or components or commence production to the extent essential to meet the delivery schedule (see Alternate II of the clause at 52.209-3, First Article Approval—Contractor Testing, and Alternate II of the clause at 52.209-4, First Article Approval—Government Testing). Costs incurred based on this authorization are allocable to the contract for—

- (1) Progress payments; and
- (2) Termination settlements if the contract is terminated for the convenience of the Government.

9.306 Solicitation requirements.

Solicitations containing a testing and approval requirement shall—

(a) Provide, in the circumstance where the contractor is to be responsible for the first article approval testing—

- (1) The performance or other characteristics that the first article must meet for approval;
- (2) The detailed technical requirements for the tests that must be performed for approval; and
- (3) The necessary data that must be submitted to the Government in the first article approval test report;

(b) Provide, in the circumstance where the Government is to be responsible for the first article approval testing—

- (1) The performance or other characteristics that the first article must meet for approval; and
- (2) The tests to which the first article will be subjected for approval;

(c) Inform offerors that the requirement may be waived when supplies identical or similar to those called for have previously been delivered by the offeror and accepted by the Government (see 52.209-3(h) and 52.209-4(i));

(d) Permit the submission of alternative offers, one including testing and approval and the other excluding testing and approval (if eligible under 9.306(c));

(e) State clearly the first article’s relationship to the contract quantity (see paragraph (e) of the clause at 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing);

(f) Contain a delivery schedule for the production quantity (see 12.104). The delivery schedule may—

- (1) Be the same whether or not testing and approval is waived; or

(2) Provide for earlier delivery when testing and approval is waived and the Government desires earlier delivery. In the latter case, any resulting difference in delivery schedules shall not be a factor in evaluation for award. The clause at 52.209-4, First Article Approval—Government Testing, shall contain the delivery schedule for the first article;

(g) Provide for the submission of contract numbers, if any, to document the offeror's eligibility under 9.306(c);

(h) State whether the approved first article will serve as a manufacturing standard; and

(i) Include, when the Government is responsible for first article testing, the Government's estimated testing costs as a factor for use in evaluating offers (when appropriate).

(j) Inform offerors that the prices for first articles and first article tests in relation to production quantities shall not be materially unbalanced (see 15.404-1(g)) if first article test items or tests are to be separately priced.

9.307 Government administration procedures.

(a) Before the contractor ships the first article, or the first article test report, to the Government laboratory or other activity responsible for approval at the address specified in the contract, the contract administration office shall provide that activity with as much advance notification as is feasible of the forthcoming shipment, and—

(1) Advise that activity of the contractual requirements for testing and approval, or evaluation, as appropriate;

(2) Call attention to the notice requirement in paragraph (b) of the clause at 52.209-3, First Article Approval—Contractor Testing, or 52.209-4, First Article Approval—Government Testing; and

(3) Request that the activity inform the contract administration office of the date when testing or evaluation will be completed.

(b) The Government laboratory or other activity responsible for first article testing or evaluation shall inform the contracting office whether to approve, conditionally approve, or disapprove the first article. The contracting officer shall then notify the contractor of the action taken and furnish a copy of the notice to the contract administration office. The notice shall include the first article shipment number, when available, and the applicable contract line item number. Any changes in the drawings, designs, or specifications determined by the contracting officer to be necessary shall be made under the Changes clause, and not by the notice of approval, conditional approval, or disapproval furnished the contractor.

9.308 Contract clauses.

9.308-1 Testing performed by the contractor.

(a)(1) The contracting officer shall insert the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article testing.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the clause with its Alternate II.

(b)(1) The contracting officer shall insert a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require—

(i) First article approval; and

(ii) That the contractor be required to conduct the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-3, First Article Approval—Contractor Testing, with its Alternate II.

9.308-2 Testing performed by the Government.

(a)(1) The contracting officer shall insert the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a fixed-price contract is contemplated and it is intended that the contract require first article approval and that the Government will be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the same facility, the contracting officer shall use the basic clause with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use the basic clause with its Alternate II.

(b)(1) The contracting officer shall insert a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, in solicitations and contracts when a cost-reimbursement contract is contemplated and it is intended that the contract require first article approval and that the Government be responsible for conducting the first article test.

(2) If it is intended that the contractor be required to produce the first article and the production quantity at the

same facility, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate I.

(3) If it is necessary to authorize the contractor to purchase material or to commence production before first article approval, the contracting officer shall use a clause substantially the same as the clause at 52.209-4, First Article Approval—Government Testing, with its Alternate II.

Subpart 9.4—Debarment, Suspension, and Ineligibility

9.400 Scope of subpart.

Policies and procedures governing the debarment and suspension of contractors by the GPO are contained in GPO Instruction 110.11B.

9.401 [Reserved]

9.402 [Reserved]

9.403 [Reserved]

9.404 [Reserved]

9.405 [Reserved]

9.405-1 [Reserved]

9.405-2 [Reserved]

9.406 [Reserved]

9.406-1 [Reserved]

9.406-2 [Reserved]

9.406-3 [Reserved]

9.406-4 [Reserved]

9.406-5 [Reserved]

9.407 [Reserved]

9.407-1 [Reserved]

9.407-2 [Reserved]

9.407-3 [Reserved]

9.407-4 [Reserved]

9.407-5 [Reserved]

9.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a) When an offeror, in compliance with the provision at 52.209-5, Certification Regarding Debarment, Suspension,

Proposed Debarment, and Other Responsibility Matters, indicates an indictment, charge, civil judgment, conviction, suspension, debarment, proposed debarment, ineligibility, or default of a contract, the contracting officer shall—

(1) Request such additional information from the offeror as the contracting officer deems necessary in order to make a determination of the offeror's responsibility (but see 9.405); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see 9.406-3(a) and 9.407-3(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsive.

9.409 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.209-5, Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.209-6, Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, in solicitations and contracts where the contract value exceeds \$25,000.

Subpart 9.5—Organizational and Consultant Conflicts of Interest

9.500 Scope of subpart.

This subpart—

- (a) Prescribes responsibilities, general rules, and procedures for identifying, evaluating, and resolving organizational conflicts of interest; and
- (b) Provides examples to assist contracting officers in applying these rules and procedures to individual contracting situations.

9.501 Definition.

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

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

9.502 Applicability.

- (a) This subpart applies to contracts with either profit or nonprofit organizations, including nonprofit organizations created largely or wholly with Government funds.
- (b) The applicability of this subpart is not limited to any particular kind of acquisition. However, organizational conflicts of interest are more likely to occur in contracts involving—
 - (1) Management support services;
 - (2) Consultant or other professional services;
 - (3) Contractor performance of or assistance in technical evaluations; or
 - (4) Systems engineering and technical direction work performed by a contractor that does not have overall contractual responsibility for development or production.
- (c) An organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract, or when the nature of the work to be performed on the instant contract creates an actual or potential conflict of interest on a future acquisition. In the latter case, some restrictions on future activities of the contractor may be required.
- (d) Acquisitions subject to unique agency organizational conflict of interest statutes are excluded from the requirements of this subpart.

9.503 Waiver.

The agency head or a designee may waive any general rule or procedure of this subpart by determining that its application in a particular situation would not be in the Government’s interest. Any request for waiver must be in writing, shall set forth the extent of the conflict, and requires approval by the agency head or a designee. Agency heads shall not delegate waiver authority below the level of head of a contracting activity.

9.504 Contracting officer responsibilities.

(a) Using the general rules, procedures, and examples in this subpart, contracting officers shall analyze planned acquisitions in order to—

(1) Identify and evaluate potential organizational conflicts of interest as early in the acquisition process as possible; and

(2) Avoid, neutralize, or mitigate significant potential conflicts before contract award.

(b) Contracting officers should obtain the advice of counsel and the assistance of appropriate technical specialists in evaluating potential conflicts and in developing any necessary solicitation provisions and contract clauses (see 9.506).

(c) Before issuing a solicitation for a contract that may involve a significant potential conflict, the contracting officer shall recommend to the head of the contracting activity a course of action for resolving the conflict (see 9.506).

(d) In fulfilling their responsibilities for identifying and resolving potential conflicts, contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation. The contracting officer’s judgment need be formally documented only when a substantive issue concerning potential organizational conflict of interest exists.

(e) The contracting officer shall award the contract to the apparent successful offeror unless a conflict of interest is determined to exist that cannot be avoided or mitigated. Before determining to withhold award based on conflict of interest considerations, the contracting officer shall notify the contractor, provide the reasons therefor, and allow the contractor a reasonable opportunity to respond. If the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding a conflict of interest, a request for waiver shall be submitted in accordance with 9.503. The waiver request and decision shall be included in the contract file.

9.505 General rules.

The general rules in 9.505-1 through 9.505-4 prescribe limitations on contracting as the means of avoiding, neutralizing, or mitigating organizational conflicts of interest that might otherwise exist in the stated situations. Some illustrative examples are provided in 9.508. Conflicts may arise in

situations not expressly covered in this section 9.505 or in the examples in 9.508. Each individual contracting situation should be examined on the basis of its particular facts and the nature of the proposed contract. The exercise of common sense, good judgment, and sound discretion is required in both the decision on whether a significant potential conflict exists and, if it does, the development of an appropriate means for resolving it. The two underlying principles are—

(a) Preventing the existence of conflicting roles that might bias a contractor's judgment; and

(b) Preventing unfair competitive advantage. In addition to the other situations described in this subpart, an unfair competitive advantage exists where a contractor competing for award of any Federal contract possesses—

(1) Proprietary information that was obtained from a Government official without proper authorization; or

(2) Source selection information (as defined in 2.101) that is relevant to the contract but is not available to all competitors, and such information would assist that contractor in obtaining the contract.

9.505-1 Providing systems engineering and technical direction.

(a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not—

(1) Be awarded a contract to supply the system or any of its major components; or

(2) Be a subcontractor or consultant to a supplier of the system or any of its major components.

(b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore this contractor should not be in a position to make decisions favoring its own products or capabilities.

9.505-2 Preparing specifications or work statements.

(a)(1) If a contractor prepares and furnishes complete specifications covering nondevelopmental items, to be used in a competitive acquisition, that contractor shall not be allowed to furnish these items, either as a prime contractor or as a subcontractor, for a reasonable period of time including,

at least, the duration of the initial production contract. This rule shall not apply to—

(i) Contractors that furnish at Government request specifications or data regarding a product they provide, even though the specifications or data may have been paid for separately or in the price of the product; or

(ii) Situations in which contractors, acting as industry representatives, help Government agencies prepare, refine, or coordinate specifications, regardless of source, provided this assistance is supervised and controlled by Government representatives.

(2) If a single contractor drafts complete specifications for nondevelopmental equipment, it should be eliminated for a reasonable time from competition for production based on the specifications. This should be done in order to avoid a situation in which the contractor could draft specifications favoring its own products or capabilities. In this way the Government can be assured of getting unbiased advice as to the content of the specifications and can avoid allegations of favoritism in the award of production contracts.

(3) In development work, it is normal to select firms that have done the most advanced work in the field. These firms can be expected to design and develop around their own prior knowledge. Development contractors can frequently start production earlier and more knowledgeably than firms that did not participate in the development, and this can affect the time and quality of production, both of which are important to the Government. In many instances the Government may have financed the development. Thus, while the development contractor has a competitive advantage, it is an unavoidable one that is not considered unfair; hence no prohibition should be imposed.

(b)(1) If a contractor prepares, or assists in preparing, a work statement to be used in competitively acquiring a system or services—or provides material leading directly, predictably, and without delay to such a work statement—that contractor may not supply the system, major components of the system, or the services unless—

(i) It is the sole source;

(ii) It has participated in the development and design work; or

(iii) More than one contractor has been involved in preparing the work statement.

(2) Agencies should normally prepare their own work statements. When contractor assistance is necessary, the contractor might often be in a position to favor its own products or capabilities. To overcome the possibility of bias, contractors are prohibited from supplying a system or services acquired on the basis of work statements growing out of their services, unless excepted in paragraph (b)(1) of this section.

(3) For the reasons given in 9.505-2(a)(3), no prohibitions are imposed on development and design contractors.

9.505-3 Providing evaluation services.

Contracts for the evaluation of offers for products or services shall not be awarded to a contractor that will evaluate its own offers for products or services, or those of a competitor, without proper safeguards to ensure objectivity to protect the Government's interests.

9.505-4 Obtaining access to proprietary information.

(a) When a contractor requires proprietary information from others to perform a Government contract and can use the leverage of the contract to obtain it, the contractor may gain an unfair competitive advantage unless restrictions are imposed. These restrictions protect the information and encourage companies to provide it when necessary for contract performance. They are not intended to protect information—

(1) Furnished voluntarily without limitations on its use; or

(2) Available to the Government or contractor from other sources without restriction.

(b) A contractor that gains access to proprietary information of other companies in performing advisory and assistance services for the Government must agree with the other companies to protect their information from unauthorized use or disclosure for as long as it remains proprietary and refrain from using the information for any purpose other than that for which it was furnished. The contracting officer shall obtain copies of these agreements and ensure that they are properly executed.

(c) Contractors also obtain proprietary and source selection information by acquiring the services of marketing consultants which, if used in connection with an acquisition, may give the contractor an unfair competitive advantage. Contractors should make inquiries of marketing consultants to ensure that the marketing consultant has provided no unfair competitive advantage.

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers first should seek the information from within the Government or from other readily available sources. Government sources include the files and the knowledge of personnel within the contracting office, other contracting offices, the cognizant contract administration and audit activities and offices concerned with contract financing. Non-Government sources include publications and commercial services, such as credit rating services, trade and financial journals, and business directories and registers.

(b) If the contracting officer decides that a particular acquisition involves a significant potential organizational conflict of interest, the contracting officer shall, before issu-

ing the solicitation, submit for approval to the chief of the contracting office (unless a higher level official is designated by the agency)—

(1) A written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict, based on the general rules in 9.505 or on another basis not expressly stated in that section;

(2) A draft solicitation provision (see 9.507-1); and

(3) If appropriate, a proposed contract clause (see 9.507-2).

(c) The approving official shall—

(1) Review the contracting officer's analysis and recommended course of action, including the draft provision and any proposed clause;

(2) Consider the benefits and detriments to the Government and prospective contractors; and

(3) Approve, modify, or reject the recommendations in writing.

(d) The contracting officer shall—

(1) Include the approved provision(s) and any approved clause(s) in the solicitation or the contract, or both;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations; and

(3) Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity.

(e) If, during the effective period of any restriction (see 9.507), a contracting office transfers acquisition responsibility for the item or system involved, it shall notify the successor contracting office of the restriction, and send a copy of the contract under which the restriction was imposed.

9.507 Solicitation provisions and contract clause.**9.507-1 Solicitation provisions.**

As indicated in the general rules in 9.505, significant potential organizational conflicts of interest are normally resolved by imposing some restraint, appropriate to the nature of the conflict, upon the contractor's eligibility for future contracts or subcontracts. Therefore, affected solicitations shall contain a provision that—

(a) Invites offerors' attention to this subpart;

(b) States the nature of the potential conflict as seen by the contracting officer;

(c) States the nature of the proposed restraint upon future contractor activities; and

(d) Depending on the nature of the acquisition, states whether or not the terms of any proposed clause and the application of this subpart to the contract are subject to negotiation.

9.507-2 Contract clause.

(a) If, as a condition of award, the contractor's eligibility for future prime contract or subcontract awards will be restricted or the contractor must agree to some other restraint, the solicitation shall contain a proposed clause that specifies both the nature and duration of the proposed restraint. The contracting officer shall include the clause in the contract, first negotiating the clause's final terms with the successful offeror, if it is appropriate to do so (see 9.506(d) of this subsection).

(b) The restraint imposed by a clause shall be limited to a fixed term of reasonable duration, sufficient to avoid the circumstance of unfair competitive advantage or potential bias. This period varies. It might end, for example, when the first production contract using the contractor's specifications or work statement is awarded, or it might extend through the entire life of a system for which the contractor has performed systems engineering and technical direction. In every case, the restriction shall specify termination by a specific date or upon the occurrence of an identifiable event.

9.508 Examples.

The examples in paragraphs (a) through (i) following illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive, but are intended to help the contracting officer apply the general rules in 9.505 to individual contract situations.

(a) Company A agrees to provide systems engineering and technical direction for the Navy on the powerplant for a group of submarines (*i.e.*, turbines, drive shafts, propellers, etc.). Company A should not be allowed to supply any powerplant components. Company A can, however, supply components of the submarine unrelated to the powerplant (*e.g.*, fire control, navigation, etc.). In this example, the system is the powerplant, not the submarine, and the ban on supplying components is limited to those for the system only.

(b) Company A is the systems engineering and technical direction contractor for system X. After some progress, but before completion, the system is canceled. Later, system Y is developed to achieve the same purposes as system X, but in a fundamentally different fashion. Company B is the systems engineering and technical direction contractor for system Y. Company A may supply system Y or its components.

(c) Company A develops new electronic equipment and, as a result of this development, prepares specifications. Company A may supply the equipment.

(d) XYZ Tool Company and PQR Machinery Company, representing the American Tool Institute, work under Government supervision and control to refine specifications or to clarify the requirements of a specific acquisition. These companies may supply the item.

(e) Before an acquisition for information technology is conducted, Company A is awarded a contract to prepare data system specifications and equipment performance criteria to be used as the basis for the equipment competition. Since the specifications are the basis for selection of commercial hardware, a potential conflict of interest exists. Company A should be excluded from the initial follow-on information technology hardware acquisition.

(f) Company A receives a contract to define the detailed performance characteristics an agency will require for purchasing rocket fuels. Company A has not developed the particular fuels. When the definition contract is awarded, it is clear to both parties that the agency will use the performance characteristics arrived at to choose competitively a contractor to develop or produce the fuels. Company A may not be awarded this follow-on contract.

(g) Company A receives a contract to prepare a detailed plan for scientific and technical training of an agency's personnel. It suggests a curriculum that the agency endorses and incorporates in its request for proposals to institutions to establish and conduct the training. Company A may not be awarded a contract to conduct the training.

(h) Company A is selected to study the use of lasers in communications. The agency intends to ask that firms doing research in the field make proprietary information available to Company A. The contract must require Company A to—

(1) Enter into agreements with these firms to protect any proprietary information they provide; and

(2) Refrain from using the information in supplying lasers to the Government or for any purpose other than that for which it was intended.

(i) An agency that regulates an industry wishes to develop a system for evaluating and processing license applications. Contractor X helps develop the system and process the applications. Contractor X should be prohibited from acting as a consultant to any of the applicants during its period of performance and for a reasonable period thereafter.

Subpart 9.6—Contractor Team Arrangements**9.601 Definition.**

“Contractor team arrangement,” as used in this subpart, means an arrangement in which—

- (1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or
- (2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program.

9.602 General.

(a) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to—

- (1) Complement each other’s unique capabilities; and
- (2) Offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(b) Contractor team arrangements may be particularly appropriate in complex research and development acquisitions, but may be used in other appropriate acquisitions, including production.

(c) The companies involved normally form a contractor team arrangement before submitting an offer. However, they may enter into an arrangement later in the acquisition process, including after contract award.

9.603 Policy.

The Government will recognize the integrity and validity of contractor team arrangements; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or, for arrangements entered into after submission of an offer, before the arrangement becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

9.604 Limitations.

Nothing in this subpart authorizes contractor team arrangements in violation of antitrust statutes or limits the Government’s rights to—

- (a) Require consent to subcontracts (see Subpart 44.2);
- (b) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor (see Subpart 9.1);
- (c) Provide to the prime contractor data rights owned or controlled by the Government;
- (d) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and
- (e) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

Subpart 9.7—[Reserved]

* * * * *

PART 10—MARKET RESEARCH

Sec.

10.000 Scope of part.

10.001 Policy.

10.002 Procedures.

This page intentionally left blank.

10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services.

10.001 Policy.

(a) Contracting officers must—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost; and

(iv) Before soliciting offers for acquisitions that could lead to a bundled contract; and

(v) Contracting officers shall conduct market research on an ongoing basis, and take advantage to the maximum extent practicable of commercially available market research methods, to identify effectively the capabilities, including the capabilities of small businesses and new entrants into Federal contracting, that are available in the marketplace for meeting the requirements of the agency in furtherance of defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack (Pub. L. 107-296 Sec. 858); and

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see Subpart 23.4) and promote energy conservation and efficiency; and

(vi) Determine whether bundling is necessary and justified (see 7.107).

(vii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see Subpart 39.2).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

10.002 Procedures.

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. Market research involves obtaining information specific to the item being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Items of a type customarily available in the commercial marketplace;

(B) Items of a type customarily available in the commercial marketplace with modifications; or

(C) Items used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, etc., under which commercial sales of the products are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Size and status of potential sources (see Part 19).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying Government data bases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency

needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at Subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in Part 12.

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, Part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use Part 12 for the acquisition (see 5.207(e)(4)).

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

* * * * *

PART 11—DESCRIBING AGENCY NEEDS

Sec.

11.000	Scope of part.		
11.001	Definitions.		
11.002	Policy.		
	Subpart 11.1—Selecting and Developing Requirements Documents		
11.101	Order of precedence for requirements documents.		
11.102	[Reserved]		
11.103	Market acceptance.		
11.104	Use of brand name or equal purchase descriptions.		
11.105	Items peculiar to one manufacturer.		
11.106	Purchase descriptions for service contracts.		
11.107	Solicitation provision.		
	Subpart 11.2—Using and Maintaining Requirements Documents		
11.201	Identification and availability of specifications.		
11.202	Maintenance of standardization documents.		
11.203	Customer satisfaction.		
11.204	Solicitation provisions and contract clauses.		
	Subpart 11.3—Acceptable Material		
11.301	Definitions.		
11.302	Policy.		
11.303	Special requirements for printing and writing paper.		
11.304	Contract clause.		
			Subpart 11.4—Delivery or Performance Schedules
		11.401	General.
		11.402	Factors to consider in establishing schedules.
		11.403	Supplies or services.
		11.404	Contract clauses.
			Subpart 11.5—Liquidated Damages
		11.500	Scope.
		11.501	Policy.
		11.502	Procedures.
		11.503	Contract clauses.
			Subpart 11.6—Priorities and Allocations
		11.600	Scope of subpart.
		11.601	Definitions.
		11.602	General.
		11.603	Procedures.
		11.604	Solicitation provision and contract clause.
			Subpart 11.7—Variation in Quantity
		11.701	Supply contracts.
		11.702	Construction contracts.
		11.703	Contract clauses.
			Subpart 11.8—Testing
		11.801	Preaward in-use evaluation.

This page intentionally left blank.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

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

“Remanufactured” means factory rebuilt to original specifications.

11.002 Policy.

(a) The agency shall—

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

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

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

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

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

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

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

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

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

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

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

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

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

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

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services; and

(iv) Products and services that utilize renewable energy technologies.

(2) Although the above-cited executive orders are not applicable to GPO, it is agency policy to follow the principles of the executive orders when doing so will not adversely affect agency needs. The agency must consider use of recovered materials, energy- and water-efficient products and services, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see Subparts 23.2 and 23.4 and 23.703(b)) when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for supplies and services; and

(iii) Developing source-selection factors.

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

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

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

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

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

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

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

11.102 [Reserved]

11.103 Market acceptance.

(a) In accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

- (1) Have either—
 - (i) Achieved commercial market acceptance; or
 - (ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and
- (2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

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

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

- (1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;
- (2) Relate to an item's performance and intended use, not an offeror's capability;
- (3) Are supported by market research;

(4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and

(5) Consider the entire relevant commercial market, including small business concerns.

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

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

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

11.104 Use of brand name or equal purchase descriptions.

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

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

11.105 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, unless—

(a) The particular brand name, product, or feature is essential to the Government's requirements, and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs;

(b) The authority to contract without providing for full and open competition is supported by the required justifications and approvals (see 6.302-1); and

(c) The basis for not providing for maximum practicable competition is documented in the file when the acquisition is awarded using simplified acquisition procedures.

11.106 Purchase descriptions for service contracts.

In drafting purchase descriptions for service contracts, agency requiring activities shall ensure that inherently governmental functions (see Subpart 7.5) are not assigned to a contractor. These purchase descriptions shall—

- (a) Reserve final determination for Government officials;

(b) Require proper identification of contractor personnel who attend meetings, answer Government telephones, or work in situations where their actions could be construed as acts of Government officials unless, in the judgment of the agency, no harm can come from failing to identify themselves; and

(c) Require suitable marking of all documents or reports produced by contractors.

11.107 Solicitation provision.

(a) Insert the provision at 52.211-6, Brand Name or Equal, when brand name or equal purchase descriptions are included in a solicitation.

Subpart 11.2—Using and Maintaining Requirements Documents

11.201 Identification and availability of specifications.

(a) Solicitations citing requirements documents listed in the General Services Administration (GSA) Index of Federal Specifications, Standards and Commercial Item Descriptions, the DoD Index of Specifications and Standards (DoDISS), or other agency index shall identify each document's approval date and the dates of any applicable amendments and revisions. Do not use general identification references, such as "the issue in effect on the date of the solicitation." Contracting offices will not normally furnish these cited documents with the solicitation, except when—

(1) The requirements document must be furnished with the solicitation to enable prospective contractors to make a competent evaluation of the solicitation;

(2) In the judgment of the contracting officer, it would be impracticable for prospective contractors to obtain the documents in reasonable time to respond to the solicitation; or

(3) A prospective contractor requests a copy of a Government promulgated requirements document.

(b) Contracting offices shall clearly identify in the solicitation any pertinent documents not listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions or DoDISS. Such documents shall be furnished with the solicitation or specific instructions shall be furnished for obtaining or examining such documents.

(c) When documents refer to other documents, such references shall—

(1) Be restricted to documents, or appropriate portions of documents, that apply in the acquisition;

(2) Cite the extent of their applicability;

(3) Not conflict with other documents and provisions of the solicitation; and

(4) Identify all applicable first tier references.

(d)(1) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, may be purchased from the—

General Services Administration
Federal Supply Service
Specifications Section
Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407
Telephone (202) 619-8925.

(2) The DoDISS may be obtained from the—

(i) ASSIST database via the Internet at <http://assist.daps.mil>; or

Department of Defense Single Stock Point
(DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094
Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(e) Agencies may purchase some nongovernment standards, including voluntary consensus standards, from the National Technical Information Service's Fedworld Information Network. Agencies may also obtain nongovernment standards from the standards developing organization responsible for the preparation, publication, or maintenance of the standard, or from an authorized document reseller. The National Institute of Standards and Technology can assist agencies in identifying sources for, and content of, nongovernment standards. DoD activities may obtain from the DoDSSP those nongovernment standards, including voluntary consensus standards, adopted for use by defense activities.

11.202 Maintenance of standardization documents.

(a) Recommendations for changes to standardization documents listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions should be submitted to the—

General Services Administration
Federal Supply Service
Office of Acquisition
Washington, DC 20406.

Agencies shall submit recommendations for changes to standardization documents listed in the DoDISS to the cognizant preparing activity.

(b) When an agency cites an existing standardization document but modifies it to meet its needs, the agency shall follow the guidance in Federal Standardization Manual and, for Defense components, DoD 4120.3-M, Defense Standardization Program Policies and Procedures.

11.203 Customer satisfaction.

Acquisition organizations shall communicate with customers to determine how well the requirements document reflects the customer's needs and to obtain suggestions for corrective actions. Whenever practicable, the agency may provide affected industry an opportunity to comment on the requirements documents.

11.204 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.211-1, Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, in solicitations that

cite specifications listed in the Index that are not furnished with the solicitation.

(b) The contracting officer shall insert the provision at 52.211-2, Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L, in solicitations that cite specifications listed in the DoDISS or DoD 5010.12-L that are not furnished with the solicitation.

(c) The contracting officer shall insert a provision substantially the same as the provision at 52.211-3, Availability of Specifications Not Listed in the GSA Index of Federal

Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are not furnished with the solicitation, but may be obtained from a designated source.

(d) The contracting officer shall insert a provision substantially the same as the provision at 52.211-4, Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, in solicitations that cite specifications that are not listed in the Index and are available for examination at a specified location.

Subpart 11.3—Acceptable Material

11.301 Definitions.

As used in this subpart—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material”. For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Recovered material” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

(1) Postconsumer fiber.

(2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

11.302 Policy.

(a) Agencies must not require virgin material or supplies composed of or manufactured using virgin material unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

(b)(1) When acquiring other than commercial items, agencies must require offerors to identify used, reconditioned, or remanufactured supplies; or unused former Gov-

ernment surplus property proposed for use under the contract. These supplies or property may not be used in contract performance unless authorized by the contracting officer.

(2) When acquiring commercial items, the contracting officer must consider the customary practices in the industry for the item being acquired. The contracting officer may require offerors to provide information on used, reconditioned, or remanufactured supplies, or unused former Government surplus property proposed for use under the contract. The request for the information must be included in the solicitation, and to the maximum extent practicable must be limited to information or standards consistent with normal commercial practices.

(c) When the contracting officer needs additional information to determine whether supplies meet minimum recovered material standards stated in the solicitation, the contracting officer may require offerors to submit additional information on the recycled content or related standards. The request for the information must be included in the solicitation. When acquiring commercial items, limit the information to the maximum extent practicable to that available under normal commercial practices.

11.303 Special requirements for printing and writing paper.

(a) Section 505 of Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, establishes minimum recovered material content standards for agency purchases of printing and writing paper. Section 505 requires that 100 percent of an agency’s purchases of printing and writing paper must meet or exceed one of the minimum content standards specified in paragraph (b) of this section.

(b) For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent postconsumer materials. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency must purchase paper containing no less than 20 percent postconsumer material.

11.304 Contract clause.

Insert the clause at 52.211-5, Material Requirements, in solicitations and contracts for supplies that are not commercial items.

Subpart 11.4—Delivery or Performance Schedules

11.401 General.

(a) The time of delivery or performance is an essential contract element and shall be clearly stated in solicitations. Contracting officers shall ensure that delivery or performance schedules are realistic and meet the requirements of the acquisition. Schedules that are unnecessarily short or difficult to attain—

- (1) Tend to restrict competition,
- (2) Are inconsistent with small business policies, and
- (3) May result in higher contract prices.

(b) Solicitations shall, except when clearly unnecessary, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

(c) If timely delivery or performance is unusually important to the Government, liquidated damages clauses may be used (see Subpart 11.5).

11.402 Factors to consider in establishing schedules.

(a) *Supplies or services.* When establishing a contract delivery or performance schedule, consideration shall be given to applicable factors such as the—

- (1) Urgency of need;
- (2) Industry practices;
- (3) Market conditions;
- (4) Transportation time;
- (5) Production time;
- (6) Capabilities of small business concerns;
- (7) Administrative time for obtaining and evaluating offers and for awarding contracts;
- (8) Time for contractors to comply with any conditions precedent to contract performance; and
- (9) Time for the Government to perform its obligations under the contract; *e.g.*, furnishing Government property.

(b) *Construction.* When scheduling the time for completion of a construction contract, the contracting officer shall consider applicable factors such as the—

- (1) Nature and complexity of the project;
- (2) Construction seasons involved;
- (3) Required completion date;
- (4) Availability of materials and equipment;
- (5) Capacity of the contractor to perform; and
- (6) Use of multiple completion dates. (In any given contract, separate completion dates may be established for separable items of work. When multiple completion dates are used, requests for extension of time must be evaluated with respect to each item, and the affected completion dates modified when appropriate.)

11.403 Supplies or services.

(a) The contracting officer may express contract delivery or performance schedules in terms of—

- (1) Specific calendar dates;
- (2) Specific periods from the date of the contract; *i.e.*, from the date of award or acceptance by the Government, or from the date shown as the effective date of the contract;
- (3) Specific periods from the date of receipt by the contractor of the notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government); or
- (4) Specific time for delivery after receipt by the contractor of each individual order issued under the contract, as in indefinite delivery type contracts and GSA schedules.

(b) The time specified for contract performance should not be curtailed to the prejudice of the contractor because of delay by the Government in giving notice of award.

(c) If the delivery schedule is based on the date of the contract, the contracting officer shall mail or otherwise furnish to the contractor the contract, notice of award, acceptance of proposal, or other contract document not later than the date of the contract.

(d) If the delivery schedule is based on the date the contractor receives the notice of award, or if the delivery schedule is expressed in terms of specific calendar dates on the assumption that the notice of award will be received by a specified date, the contracting officer shall send the contract, notice of award, acceptance of proposal, or other contract document by certified mail, return receipt requested, or by any other method that will provide evidence of the date of receipt.

(e) In invitations for bids, if the delivery schedule is based on the date of the contract, and a bid offers delivery based on the date the contractor receives the contract or notice of award, the contracting officer shall evaluate the bid by adding 5 calendar days (as representing the normal time for arrival through ordinary mail). If the contract or notice of award will be transmitted electronically, (1) the solicitation shall so state; and (2) the contracting officer shall evaluate delivery schedule based on the date of contract receipt or notice of award, by adding one working day. (The term “working day” excludes weekends and U.S. Federal holidays.) If the offered delivery date computed with mailing or transmittal time is later than the delivery date required by the invitation for bids, the bid shall be considered nonresponsive and rejected. If award is made, the delivery date will be the number of days offered in the bid after the contractor actually receives the notice of award.

11.404 Contract clauses.

(a) *Supplies or services.* (1) The contracting officer may use a time of delivery clause to set forth a required delivery schedule and to allow an offeror to propose an alternative delivery schedule. The clauses and their alternates may be used in solicitations and contracts for other than construction and architect-engineering substantially as shown, or they may be changed or new clauses written.

(2) The contracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.211-8, Time of Delivery, if the Government requires delivery by a particular time and the delivery schedule is to be based on the date of the contract. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may use the clause with its Alternate I. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may use the clause with its Alternate II. If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may use the clause with its Alternate III.

(3) The contracting officer may insert in solicitations and contracts other than those for construction and architect-engineering, a clause substantially the same as the clause at 52.211-9, Desired and Required Time of Delivery, if the Government desires delivery by a certain time but requires delivery by a specified later time, and the delivery schedule is to be based on the date of the contract. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may use the clause with its Alternate I. If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may use the clause with its Alternate II. If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may use the clause with its Alternate III.

(b) *Construction.* The contracting officer shall insert the clause at 52.211-10, Commencement, Prosecution, and Completion of Work, in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts. If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, the contracting officer may use the clause with its Alternate I.

Subpart 11.5—Liquidated Damages

11.500 Scope.

This subpart prescribes policies and procedures for using liquidated damages clauses in solicitations and contracts for supplies, services, research and development, and construction. This subpart does not apply to liquidated damages for subcontracting plans (see 19.705-7) or liquidated damages related to the Contract Work Hours and Safety Standards Act (see Subpart 22.3).

11.501 Policy.

(a) The contracting officer must consider the potential impact on pricing, competition, and contract administration before using a liquidated damages clause. Use liquidated damages clauses only when—

(1) The time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and

(2) The extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

(b) Liquidated damages are not punitive and are not negative performance incentives (see 16.402-2). Liquidated damages are used to compensate the Government for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. Use a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the Government. Also, the contracting officer may use more than one liquidated damages rate when the contracting officer expects the probable damage to the Government to change over the contract period of performance.

(c) The contracting officer must take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the contracting officer is considering terminating the contract for default, the contracting officer should seek expeditiously to obtain performance by the contractor or terminate the contract and repurchase (see Subpart 49.4). Prompt contracting officer action will prevent

excessive loss to defaulting contractors and protect the interests of the Government.

(d) The Director, Materials Management Service, may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves (see Treasury Order 145-10).

11.502 Procedures.

(a) Include the applicable liquidated damages clause and liquidated damages rates in solicitations when the contract will contain liquidated damages provisions.

(b) Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. The rate(s) should include the estimated daily cost of Government inspection and superintendence. The rate(s) should also include an amount for other expected expenses associated with delayed completion such as—

- (1) Renting substitute property; or
- (2) Paying additional allowance for living quarters.

11.503 Contract clauses.

(a) Use the clause at 52.211-11, Liquidated Damages—Supplies, Services, or Research and Development, in fixed-price solicitations and contracts for supplies, services, or research and development when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)).

(b) Use the clause at 52.211-12, Liquidated Damages—Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see 11.501(a)). If the contract specifies more than one completion date for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(c) Use the clause at 52.211-13, Time Extensions, in solicitations and contracts for construction that use the clause at 52.211-12, Liquidated Damages—Construction, when that clause has been revised as provided in paragraph (b) of this section.

Subpart 11.6—Priorities and Allocations

11.600 Scope of subpart.

This subpart implements the Defense Priorities and Allocations System (DPAS), a Department of Commerce (DOC) regulation in support of authorized national defense programs (see 15 CFR 700).

11.601 Definitions.

As used in this subpart—

“Authorized program” means a program approved by the Federal Emergency Management Agency (FEMA) for priorities and allocations support under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), to promote the national defense. Schedule I of the DPAS lists currently authorized programs.

“Controlled materials” means the various shapes and forms of steel, copper, aluminum, and nickel alloys specified in Schedule II, and defined in Schedule III, of the DPAS.

“Delegate Agency” means an agency of the U.S. Government authorized by delegation from DOC to place priority ratings on contracts that support authorized programs. Schedule I of the DPAS lists the Delegate Agencies.

“Rated order” means a prime contract for any product, service, or material (including controlled materials) placed by a Delegate Agency under the provisions of the DPAS in support of an authorized program and which require preferential treatment, and includes subcontracts and purchase orders resulting under such contracts.

11.602 General.

(a) Under Title I of the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*), the President is authorized—

(1) To require that contracts in support of the national defense be accepted and performed on a preferential or priority basis over all other contracts, and

(2) To allocate materials and facilities in such a manner as to promote the national defense.

(b) The Office of Industrial Resource Administration (OIRA), DOC, is responsible for administering and enforcing a system of priorities and allocations to carry out Title I of the Defense Production Act for industrial items. The DPAS has been established to promote the timely availability of the necessary industrial resources to meet current national defense requirements and to provide a framework to facilitate rapid industrial mobilization in case of national emergency.

(c) The Delegate Agencies (see Schedule I of the DPAS) have been given authority by DOC to place rated orders in support of authorized programs. Other government agencies, Canada, and other friendly foreign nations may apply for

special rating authority in support of authorized programs (see 15 CFR 700.55).

(d) Rated orders shall be placed in accordance with the procedures in the DPAS. Contracting officers responsible for acquisitions in support of authorized programs shall be familiar with the DPAS and should provide guidance on the DPAS to contractors and suppliers receiving rated orders. Agency heads shall ensure compliance with the DPAS by contracting activities within their agencies.

(e) Under the Defense Production Act, any willful violation of the Act, the DPAS, or any official action taken by DOC under the DPAS, is a crime punishable by a maximum fine of \$10,000, one year in prison, or both (see 15 CFR 700.70 and 15 CFR 700.74).

11.603 Procedures.

(a) There are two levels of priority for rated orders established by the DPAS, identified by the rating symbols “DO” and “DX.” All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated and unrated orders. DX ratings are used for special defense programs designated by the President to be of the highest national priority.

(b) DOC may issue a Directive to compel a contractor or supplier to accept a rated order, to rearrange production or delivery schedules, or to improve shipments against particular rated orders. Directives issued by DOC take precedence over all rated and unrated orders as stated in the Directive.

(c) In addition to any other contractual requirements, a valid rated order must contain (see 15 CFR 700.12) the following:

(1) A priority rating consisting of the appropriate DO or DX rating symbol and a program or identification symbol to indicate the authorized program (see Schedule I of the DPAS).

(2) A required delivery date or delivery dates.

(3) The signature of an individual authorized by the agency to sign rated orders.

(d) The DPAS has the following three basic elements which are essential to the operation of the system:

(1) Mandatory acceptance of rated orders. A rated order shall be accepted by a contractor or supplier unless rejected for the reasons provided for mandatory rejection in 15 CFR 700.13(b), or for optional rejection in 15 CFR 700.13(c).

(2) Mandatory extension of priority ratings throughout the acquisition chain. Contractors and suppliers receiving rated orders shall extend priority ratings to subcontractors or vendors when acquiring items to fill the rated orders (see 15 CFR 700.15).

(3) Priority scheduling of production and delivery. Contractors and suppliers receiving rated orders shall give the rated orders priority over other contracts as needed to meet delivery requirements (see 15 CFR 700.14).

(e) Agencies shall provide contracting activities with specific guidance on the issuance of rated orders in support of agency programs.

(f) Contracting officers shall follow agency procedural instructions concerning the use of rated orders in support of agency programs.

(g) Contracting officers, contractors, or subcontractors at any tier, that experience difficulty placing rated orders, obtaining timely delivery under rated orders, locating a contractor or supplier to fill a rated order, ensuring that rated orders receive preferential treatment by contractors or suppliers, or require rating authority for items not automatically

ratable under the DPAS, should promptly seek special priorities assistance in accordance with agency procedures (see 15 CFR 700.50-55).

(h) Contracting officers shall report promptly any violations of the DPAS to DOC in accordance with agency procedures.

11.604 Solicitation provision and contract clause.

(a) Contracting officers shall insert the provision at 52.211-14, Notice of Priority Rating for National Defense Use, in solicitations when the contract to be awarded will be a rated order.

(b) Contracting officers shall insert the clause at 52.211-15, Defense Priority and Allocation Requirements, in contracts that are rated orders.

Subpart 11.7—Variation in Quantity

11.701 Supply contracts.

(a) A fixed-price supply contract may authorize Government acceptance of a variation in the quantity of items called for if the variation is caused by conditions of loading, shipping, or packing, or by allowances in manufacturing processes. Any permissible variation shall be stated as a percentage and it may be an increase, a decrease, or a combination of both; however, contracts for subsistence items may use other applicable terms of variation in quantity.

(b) There should be no standard or usual variation percentage. The overrun or underrun permitted in each contract should be based upon the normal commercial practices of a particular industry for a particular item, and the permitted percentage should be no larger than is necessary to afford a contractor reasonable protection. The permissible variation shall not exceed plus or minus 10 percent unless a different limitation is established in agency regulations. Consideration shall be given to the quantity to which the percentage variation applies. For example, when delivery will be made to multiple destinations and it is desired that the quantity variation apply to the item quantity for each destination, this requirement must be stated in the contract.

(c) Contractors are responsible for delivery of the specified quantity of items in a fixed-price contract, within allowable variations, if any. If a contractor delivers a quantity of items in excess of the contract requirements plus any allowable variation in quantity, particularly small dollar value overshipments, it results in unnecessary administrative costs to the Government in determining disposition of the excess quantity. Accordingly, the contract may include the clause at 52.211-17, Delivery of Excess Quantities, to provide that—

(1) Excess quantities of items totaling up to \$250 in value may be retained without compensating the contractor; and

(2) Excess quantities of items totaling over \$250 in value may, at the Government's option, be either returned at the contractor's expense or retained and paid for at the contract unit price.

11.702 Construction contracts.

Construction contracts may authorize a variation in estimated quantities of unit-priced items. When the variation between the estimated quantity and the actual quantity of a unit-priced item is more than plus or minus 15 percent, an equitable adjustment in the contract price shall be made upon the demand of either the Government or the contractor. The contractor may request an extension of time if the quantity variation is such as to cause an increase in the time necessary for completion. The contracting officer must receive the request in writing within 10 days from the beginning of the period of delay. However, the contracting officer may extend this time limit before the date of final settlement of the contract. The contracting officer shall ascertain the facts and make any adjustment for extending the completion date that the findings justify.

11.703 Contract clauses.

(a) The contracting officer shall insert the clause at 52.211-16, Variation in Quantity, in solicitations and contracts, if authorizing a variation in quantity in fixed-price contracts for supplies or for services that involve the furnishing of supplies.

(b) The contracting officer may insert the clause at 52.211-17, Delivery of Excess Quantities, in solicitations and contracts when a fixed-price supply contract is contemplated.

(c) The contracting officer shall insert the clause at 52.211-18, Variation in Estimated Quantity, in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items.

Subpart 11.8—Testing

11.801 Preaward in-use evaluation.

Supplies may be evaluated under comparable in-use conditions without a further test plan, provided

offerors are so advised in the solicitation. The results of such tests or demonstrations may be used to rate the proposal, to determine technical acceptability, or otherwise to evaluate the proposal (see 15.305).

* * * * *

PART 12—ACQUISITION OF COMMERCIAL ITEMS

Sec.

12.000 Scope of part.

12.001 Definition.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

12.102 Applicability.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

12.202 Market research and description of agency need.

12.203 Procedures for solicitation, evaluation, and award.

12.204 Solicitation/contract form.

12.205 Offers.

12.206 Use of past performance.

12.207 Contract type.

12.208 Determination of price reasonableness.

12.209 Contract financing.

12.210 Technical data.

12.211 Computer software.

12.212 Other commercial practices.

12.213 Cost Accounting Standards.

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

12.300 Scope of subpart.

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

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

12.303 Contract format.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

12.402 Acceptance.

12.403 Termination.

12.404 Warranties.

Subpart 12.5—[Reserved]

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

12.601 General.

12.602 Streamlined evaluation of offers.

12.603 Streamlined solicitation for commercial items.

This page intentionally left blank.

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

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

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

The Materials Management Service shall—

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

12.102 Applicability.

- (a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at 2.101.
- (b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified

Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a policy in this part, this Part 12 shall take precedence for the acquisition of commercial items.

(d) The definition of commercial item in section 2.101 uses the phrase "purposes other than governmental purposes." These purposes are those that are not unique to a government.

(e) This part shall not apply to the acquisition of commercial items—

- (1) At or below the micro-purchase threshold;
- (2) Using GPO Form 3201B;
- (3) Using the imprest fund (see 13.305);
- (4) Using the Governmentwide commercial purchase card; or
- (5) Directly from another Federal agency.

(f) Contracting officers shall treat any acquisition by or for the Department of Defense of biotechnology supplies or biotechnology services, for use to facilitate the defense against terrorism or biological attack against the United States, as an acquisition of commercial items. The policies of this Part shall apply to such acquisitions, including the requirement to use firm-fixed price contracts or fixed-price contracts with economic price adjustments. Nothing in this paragraph shall preclude a contracting officer from treating an acquisition described in this paragraph as one for a non-commercial item if a determination is made by the contracting officer that the purchase cannot be made at a fair and reasonable price using the policies of this Part. This paragraph applies only when award is made and funds are obligated on or before September 30, 2003.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

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

12.202 Market research and description of agency need.

(a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see Part 11), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in Subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

(d) Requirements documents for electronic and information technology must comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see Subpart 39.2), if consistent with the agency mission.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in 12.603. For acquisitions of commercial items exceeding the simplified acquisition threshold but not

exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

12.204 Solicitation/contract form.

(a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at 5.203(a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Consistent with the requirements at 5.203(b), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is subject to the Trade Agreements Act.

12.206 Use of past performance.

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

12.207 Contract type.

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

12.208 Contract quality assurance.

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

12.209 Determination of price reasonableness.

While the contracting officer must establish price reasonableness in accordance with 13.106-3, 14.408-2, or Subpart 15.4, as applicable, the contracting officer should be aware of customary commercial terms and conditions when pricing commercial items. Commercial item prices are affected by factors that include, but are not limited to, speed of delivery, length and extent of warranty, limitations of seller's liability, quantities ordered, length of the performance period, and specific performance requirements. The contracting officer must ensure that contract terms, conditions, and prices are commensurate with the Government's need.

12.210 Contract financing.

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

12.211 Technical data.

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

12.212 Computer software.

(a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such

licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or

(2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

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

12.213 Other commercial practices.

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

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) do not apply to contracts and subcontracts for the acquisition of commercial items when these contracts and subcontracts are firm-fixed-price or fixed-price with economic price adjustment (provided that the price adjustment is not based on actual costs incurred). See 30.201-1 for CAS applicability to fixed-price with economic price adjustment contracts and subcontracts for commercial items when the price adjustment is based on actual costs incurred. When CAS applies, the contracting officer shall insert the appropriate provisions and clauses as prescribed in 30.201.

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

12.300 Scope of subpart.

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

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

(a) Contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

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

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

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

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

(2) *The provision at 52.212-3, Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4.

(3) *The clause at 52.212-4, Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, SF 1449). The contracting officer may tailor this clause in accordance with 12.302.

(4) *The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to

Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored. Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001.

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

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

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

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

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

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

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

(3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired.

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

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropri-

ate market research, tailor the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

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

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

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the SF 1449 if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the SF 1449; a continuation of the description of the supplies/services being acquired; further elaboration of any

other item(s) on the SF 1449; any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

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

- (a) Standard Form (SF) 1449;
- (b) Continuation of any block from SF 1449, such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage), or if set aside for emerging small businesses, or set aside for very small business concerns;
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) 52.212-4, Contract Terms and Conditions— Commercial Items, by reference (see SF 1449 block 27a);
 - (2) Any addendum to 52.212-4; and
 - (3) 52.212-5, Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) 52.212-1, Instructions to Offerors—Commercial Items, by reference (see SF 1449, Block 27a);
 - (2) Any addendum to 52.212-1;
 - (3) 52.212-2, Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
 - (4) 52.212-3, Offeror Representations and Certifications—Commercial Items.

Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at 52.212-4, Contract Terms and Conditions— Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in 52.212-4 differ substantially from those contained elsewhere in the MMAR.

12.402 Acceptance.

(a) The acceptance paragraph in 52.212-4 is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see 12.404).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in 52.212-4. The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

12.403 Termination.

(a) *General.* The clause at 52.212-4 permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in 52.212-4 entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in Part 49. Consequently, the requirements of Part 49 do not apply when terminating con-

tracts for commercial items and contracting officers shall follow the procedures in this section. Contracting officers may continue to use Part 49 as guidance to the extent that Part 49 does not conflict with this section and the language of the termination paragraphs in 52.212-4.

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in 52.212-4 entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess procurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see 33.211).

(d) *Termination for the Government's convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid—

(i) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination, and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in Part 31. The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

12.404 Warranties.

(a) *Implied warranties.* The Government's post award rights contained in 52.212-4 are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective post-award administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see 12.302).

SUBPART 12.5—[RESERVED]

Subpart 12.5—[Reserved]

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

12.601 General.

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

12.602 Streamlined evaluation of offers.

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

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

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

12.603 Streamlined solicitation for commercial items.

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

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

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

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

(1) Prepare the synopsis as described at 5.207 for items 1-16.

(2) In item 17, Description, include the following additional information:

(i) The following statement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(xiv) A statement regarding any applicable Numbered Notes.

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

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

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

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

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

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

* * * * *

**MATERIALS MANAGEMENT
ACQUISITION REGULATION**

**SUBCHAPTER C—CONTRACTING METHODS AND
CONTRACT TYPES**

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

- 13.000 Scope of part.
 - 13.001 Definitions.
 - 13.002 Purpose.
 - 13.003 Policy.
 - 13.004 Legal effect of quotations.
 - 13.005 [Reserved]
 - 13.006 [Reserved]
- Subpart 13.1—Procedures**
- 13.101 General.
 - 13.102 Source list.
 - 13.103 Use of standing price quotations.
 - 13.104 Promoting competition.
 - 13.105 Synopsis and posting requirements.
 - 13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.
 - 13.106-1 Soliciting competition.
 - 13.106-2 Evaluation of quotations or offers.
 - 13.106-3 Award and documentation.
- Subpart 13.2—Actions At or Below the Micro-Purchase Threshold**
- 13.201 General.
 - 13.202 Purchase guidelines.
- Subpart 13.3—Simplified Acquisition Methods**
- 13.301 Governmentwide commercial purchase card.
 - 13.302 Purchase orders.
 - 13.302-1 General.
 - 13.302-2 Unpriced purchase orders.
 - 13.302-3 Obtaining contractor acceptance and modifying purchase orders.
 - 13.302-4 Termination or cancellation of purchase orders.
 - 13.302-5 Clauses.
 - 13.303 Blanket purchase agreements (BPAs).
 - 13.303-1 General.
 - 13.303-2 Establishment of BPAs.
 - 13.303-3 Preparation of BPAs.
 - 13.303-4 Clauses.
 - 13.303-5 Purchases under BPAs.
 - 13.303-6 Review procedures.
 - 13.303-7 Completion of BPAs.
 - 13.303-8 Optional clause.
 - 13.304 [Reserved]
 - 13.305 Imprest funds and third party drafts.
 - 13.305-1 General.
 - 13.305-2 Agency responsibilities.
 - 13.305-3 Conditions for use.
 - 13.305-4 Procedures.
 - 13.306 [Reserved]
 - 13.307 Forms.
- Subpart 13.4—Fast Payment Procedure**
- 13.401 General.
 - 13.402 Conditions for use.
 - 13.403 Preparation and execution of orders.
 - 13.404 Contract clause.
- Subpart 13.5—[Reserved]**

This page intentionally left blank.

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options. See Part 12 for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

“Authorized individual” means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

“Governmentwide commercial purchase card” means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

“Imprest fund” means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

“Third party draft” means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for GPO and contractors.

13.003 Policy.

(a) Materials Management Service shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

- (1) Required sources of supply under Part 8 (*e.g.*, Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using Subpart 13.5). Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in Subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(1) Permit use of simplified acquisition procedures; or

(2) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(c) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.

(d) Material Management Service shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.

(e) Materials Management Service shall maximize the use of electronic commerce when practicable and cost-effective (see Subpart 4.5). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(f) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in Parts 13, 14, 15, 35, or 36, including the use of Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(b)); or

(2) \$5 million for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).

(g) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see 13.104);

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see 5.203);

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see 13.106-2(b)(3); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.302-4 for procedures on termination or cancellation of purchase orders.)

13.005 [Reserved]

13.006 [Reserved]

Subpart 13.1—Procedures

13.101 General.

(a) In making purchases, contracting officers shall—

(1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable; and

(2) Provide for the inspection of supplies or services as prescribed in 46.404.

(b) In making purchases, contracting officers should—

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an "all-or-none" or "multiple award" basis provided suppliers are so advised when quotations or offers are requested;

(2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in 52.102 are satisfied;

(3) Make maximum effort to obtain trade and prompt payment discounts (see 14.408-3). Prompt payment discounts may be considered in the evaluation of IFBs and RFPs; and

(4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified

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

13.102 Source list.

(a) Each contracting office should maintain a source list (or lists, if more convenient). A list of new supply sources may be obtained from the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration. The list should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.

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

13.103 Use of standing price quotations.

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

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

13.104 Promoting competition.

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

(a) The contracting officer must not—

- (1) Solicit quotations based on personal preference; or
- (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.

(b) If using simplified acquisition procedures and providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

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

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

(2) An exception in 5.202 applies; and

(3) The contracting file is documented to explain why synopsis was not undertaken.

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

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**13.106-1 Soliciting competition.**

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

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

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

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

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

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

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

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

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

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

(iii) Notice is not required under 5.101.

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

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

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

(f) *Inquiries.* An agency should respond to inquiries received through any medium if doing so would not interfere with the efficient conduct of the acquisition.

13.106-2 Evaluation of quotations or offers.

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

(i) In an impartial manner; and

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

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

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

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

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

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

(ii) May be based on information such as the contracting officer's knowledge of and previous experience with

the supply or service being acquired, customer surveys, or other reasonable basis.

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

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

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

13.106-3 Award and documentation.

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

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

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

(i) Market research;

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

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

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

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

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

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

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

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

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

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

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

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

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

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

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

13.201 General.

(a) The Public Printer may delegate micro-purchase authority (see 1.603-3).

(b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).

(c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in Subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods.

(d) Micro-purchases do not require provisions or clauses, except as provided at 32.1110. This paragraph takes precedence over any other MMAR requirement to the contrary, but does not prohibit the use of any clause.

(e) The requirements in Part 8 apply to purchases at or below the micro-purchase threshold.

(f) The procurement requirements in the Resource Conservation and Recovery Act (42 U.S.C. 6962) and Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, apply to purchases at or below the micro-purchase threshold (see Subpart 23.4).

(g) There is a temporary \$15,000 micro-purchase threshold for the acquisition of supplies or services by or for the Department of Defense for which award is made and funds are obligated on or before September 30, 2003, facilitating the defense against terrorism or biological or chemical attack against the United States (see 2.101). Purchases using this

authority must have a clear and direct relationship to the defense against terrorism or biological or chemical attack.

13.202 Purchase guidelines.

(a) *Solicitation, evaluation of quotations, and award.*

(1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.

(2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3(b) considers the price to be reasonable.

(3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—

(i) The contracting officer or individual appointed in accordance with 1.603-3(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or

(ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).

(b) *Documentation.* If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to identification of the solicited concerns and an explanation for the award decision.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.

(a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603-3. The card may be used only for purchases that are otherwise authorized by law or regulation.

(b) When using the Governmentwide commercial purchase card, the Materials Management Service shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and that are consistent with the terms and conditions of the current GSA credit card contract. The procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. The procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under Part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor. See 32.1110(d) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

(c) The Governmentwide commercial purchase card may be used to—

- (1) Make micro-purchases;
- (2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card.

13.302 Purchase orders.

13.302-1 General.

(a) Except as provided under the unpriced purchase order method (see 13.302-2), purchase orders generally are issued on a fixed-price basis. See 12.207 for acquisition of commercial items.

(b) Purchase orders shall—

- (1) Specify the quantity of supplies or scope of services ordered;
- (2) Contain a determinable date by which delivery of the supplies or performance of the services is required;
- (3) Provide for inspection as prescribed in Part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by Part 46. When inspection and acceptance will be performed at des-

tinuation, advance copies of the purchase order or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at 14.408-3.

(c) The contracting officer's signature on purchase orders shall be in accordance with 4.101 and the definitions at 2.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

(d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.

(e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) is required for payments except as provided in 32.1110. See Subpart 32.11 for instructions for use of the appropriate clause in purchase orders. When obtaining oral quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

13.302-2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

- (1) It is impractical to obtain pricing in advance of issuance of the purchase order; and
- (2) The purchase is for—
 - (i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;
 - (ii) Material available from only one source and for which cost cannot readily be established; or
 - (iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (*e.g.*, miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see 13.106-3(a)), process the invoice for payment.

13.302-3 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's written acceptance of a purchase order modification may be required only if—

- (1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or
- (2) Required by agency regulations.

13.302-4 Termination or cancellation of purchase orders.

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

- (1) 12.403(d) and 52.212-4(l) for commercial items; or
- (2) Part 49 or 52.213-4 for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

- (1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (*i.e.*, the purchase order shall be considered canceled).
- (2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.302-5 Clauses.

(a) Each purchase order (and each purchase order modification (see 13.302-3)) shall incorporate all clauses prescribed for the particular acquisition.

(b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (*i.e.*, any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.

(d)(1) The contracting officer may use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301).

(2) The clause—

(i) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(ii) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(3) When acquiring supplies for use outside the United States, delete clause 52.225-1 from the clause list at 52.213-4(b).

13.303 Blanket purchase agreements (BPAs).**13.303-1 General.**

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).

(b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

13.303-2 Establishment of BPAs.

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid the writing of numerous purchase orders.

(4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.

(b) After determining a BPA would be advantageous, contracting officers shall—

(1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and

(2) Consider suppliers whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.

(c) BPAs may be established with—

(1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;

(2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or

(3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract.

(d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—

- (1) Securing maximum discounts;
- (2) Documenting individual purchase transactions;
- (3) Periodic billings; and
- (4) Incorporating other necessary details.

13.303-3 Preparation of BPAs.

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

(a) The following terms and conditions are mandatory:

(1) *Description of agreement.* A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.

(2) *Extent of obligation.* A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.

(3) *Purchase limitation.* A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.303-5(b)).

(4) *Individuals authorized to purchase under the BPA.* A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

(5) *Delivery tickets.* A requirement that all shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:

(i) Name of supplier.

(ii) BPA number.

(iii) Date of purchase.

(iv) Purchase number.

(v) Itemized list of supplies or services furnished.

(vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).

(vii) Date of delivery or shipment.

(6) *Invoices.* One of the following statements shall be included (except that the statement in paragraph (a)(6)(iii) of this subsection should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):

(i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.

(ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.

(iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated, provided that—

(A) A consolidated payment will be made for each specified period; and

(B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.

(iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.

(b) If the fast payment procedure is used, include the requirements stated in 13.403.

13.303-4 Clauses.

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

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

13.303-5 Purchases under BPAs.

(a) Use a BPA only for purchases that are otherwise authorized by law or regulation.

(b) Individual purchases shall not exceed the simplified acquisition threshold. However, agency regulations may establish a higher threshold consistent with the following:

(1) The simplified acquisition threshold and the \$5,000,000 limitation for individual purchases do not apply to BPAs established in accordance with 13.303-2(c)(3).

(2) The limitation for individual purchases for commercial item acquisitions conducted under Subpart 13.5 is \$5,000,000.

(c) The existence of a BPA does not justify purchasing from only one source. The requirements of 13.003(b) and Subpart 19.5 also apply to each order.

(d) If, for a particular purchase greater than the micro-purchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall—

(1) Solicit quotations from other sources (see 13.105) and make the purchase as appropriate; and

(2) Establish additional BPAs to facilitate future purchases if—

(i) Recurring requirements for the same or similar supplies or services seem likely;

(ii) Qualified sources are willing to accept BPAs; and

(iii) It is otherwise practical to do so.

(e) Limit documentation of purchases to essential information and forms as follows:

(1) Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.

(2) A paper purchase document may be issued if necessary to ensure that the supplier and the purchaser agree concerning the transaction.

(3) Unless a paper document is issued, record essential elements (*e.g.*, date, supplier, supplies or services, price, delivery date) on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.

(4) Cite the pertinent purchase requisitions and the accounting and appropriation data.

(5) When delivery is made or the services are performed, the supplier's sales document, delivery document, or invoice may (if it reflects the essential elements) be used for the purpose of recording receipt and acceptance of the supplies or services. However, if the purchase is assigned to another activity for administration, the authorized Government representative shall document receipt and acceptance of supplies or services by signing and dating the agency specified form after verification and after notation of any exceptions.

13.303-6 Review procedures.

(a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.

(b) The contracting officer that entered into the BPA shall—

(1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and

(2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.

(c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.303-7 Completion of BPAs.

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

13.303-8 Optional clause.

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

13.304 [Reserved]**13.305 Imprest funds and third party drafts.****13.305-1 General.**

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. Policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency implementing regulations. Agencies also shall be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.305-2 Agency responsibilities.

When using imprest funds and third party drafts, the Materials Management Service shall—

(a) Periodically review and determine whether there is a continuing need for each fund or third party draft account

established, and that amounts of those funds or accounts are not in excess of actual needs;

(b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and

(c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—

(1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and

(2) Documentation of purchases using imprest funds or third party drafts, including documentation of—

(i) Receipt and acceptance of supplies and services by the Government;

(ii) Receipt of cash or third party draft payments by the suppliers; and

(iii) Cash advances and reimbursements.

13.305-3 Conditions for use.

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

(a) The imprest fund transaction does not exceed \$500 or such other limits as have been approved by the agency head;

(b) The third party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions;

(c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and

(d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.305-1.

13.305-4 Procedures.

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

(b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.

(c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.

(d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (*e.g.*, if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used, endorse it “Payment to be made from Imprest

Fund” (or “Payment to be made from Third Party Draft,” as appropriate).

(e) The individual authorized to make purchases using imprest funds or third party drafts shall—

(1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—

(i) That an imprest fund or third party draft purchase has been made;

(ii) The unit prices and extensions; and

(iii) The supplier's name and address; and

(2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—

(i) The supplier's name and address;

(ii) List and quantity of items supplied;

(iii) Unit prices and extensions; and

(iv) Cash discount, if any.

13.306 [Reserved]

13.307 Forms.

(a) *Commercial items.* For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.

(b) *Other than commercial items.* (1) Except when quotations are solicited electronically, or orally, the SF 1449; SF 18, Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the SF 18 or SF 1449 to the maximum extent practicable.

(2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.

(c) *Forms used for both commercial and other than commercial items.* (1) OF 336, Continuation Sheet, or an agency form/automated format may be used when additional space is needed.

(2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.

(3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.

(d) SF 1165, Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

Subpart 13.4—Fast Payment Procedure

13.401 General.

(a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a certification that the contractor—

(1) Has delivered the supplies to a post office, common carrier, or point of first receipt by the Government; and

(2) Shall replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.

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

13.402 Conditions for use.

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

(a) Individual purchasing instruments do not exceed \$25,000, except that the Director, Materials Management Service, may permit higher dollar limitations for specified activities or items on a case-by-case basis.

(b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.

(c) Title to the supplies passes to the Government—

(1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or

(2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.

(d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.

(e) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.

(f) A system is in place to ensure—

(1) Documentation of evidence of contractor performance under fast payment purchases;

(2) Timely feedback to the contracting officer in case of contractor deficiencies; and

(3) Identification of suppliers that have a current history of abusing the fast payment procedure (also see Subpart 9.1).

13.403 Preparation and execution of orders.

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

(a) A requirement that the supplies be shipped transportation or postage prepaid.

(b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the case of unpriced purchase orders, to the contracting officer (see 13.302-2(c)).

(c) The following statement on the consignee's copy:

Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

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

13.404 Contract clause.

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

SUBPART 13.5—[RESERVED]

Subpart 13.5—[Reserved]

* * * * *

PART 14—SEALED BIDDING

Sec.

- | | | | |
|---|---|---|--|
| 14.000 | Scope of part. | 14.213 | Annual submission of representations and certifications. |
| Subpart 14.1—Use of Sealed Bidding | | | |
| 14.101 | Elements of sealed bidding. | Subpart 14.3—Submission of Bids | |
| 14.102 | [Reserved] | 14.301 | Responsiveness of bids. |
| 14.103 | Policy. | 14.302 | Bid submission. |
| 14.103-1 | General. | 14.303 | Modification or withdrawal of bids. |
| 14.103-2 | Limitations. | 14.304 | Submission, modification, and withdrawal of bids. |
| 14.104 | Types of contracts. | Subpart 14.4—Opening of Bids and Award of Contract | |
| 14.105 | Solicitations for informational or planning purposes. | 14.400 | Scope of subpart. |
| Subpart 14.2—Solicitation of Bids | | | |
| 14.201 | Preparation of invitations for bids. | 14.401 | Receipt and safeguarding of bids. |
| 14.201-1 | Uniform contract format. | 14.402 | Opening of bids. |
| 14.201-2 | Part I—The Schedule. | 14.402-1 | Unclassified bids. |
| 14.201-3 | Part II—Contract clauses. | 14.402-2 | Classified bids. |
| 14.201-4 | Part III—Documents, exhibits, and other attachments. | 14.402-3 | Postponement of openings. |
| 14.201-5 | Part IV—Representations and instructions. | 14.403 | Recording of bids. |
| 14.201-6 | Solicitation provisions. | 14.404 | Rejection of bids. |
| 14.201-7 | Contract clauses. | 14.404-1 | Cancellation of invitations after opening. |
| 14.201-8 | Price related factors. | 14.404-2 | Rejection of individual bids. |
| 14.201-9 | Simplified contract format. | 14.404-3 | Notice to bidders of rejection of all bids. |
| 14.202 | General rules for solicitation of bids. | 14.404-4 | Restrictions on disclosure of descriptive literature. |
| 14.202-1 | Bidding time. | 14.404-5 | All or none qualifications. |
| 14.202-2 | Telegraphic bids. | 14.405 | Minor informalities or irregularities in bids. |
| 14.202-3 | Bid envelopes. | 14.406 | Receipt of an unreadable electronic bid. |
| 14.202-4 | Bid samples. | 14.407 | Mistakes in bids. |
| 14.202-5 | Descriptive literature. | 14.407-1 | General. |
| 14.202-6 | Final review of invitations for bids. | 14.407-2 | Apparent clerical mistakes. |
| 14.202-7 | Facsimile bids. | 14.407-3 | Other mistakes disclosed before award. |
| 14.202-8 | Electronic bids. | 14.407-4 | Mistakes after award. |
| 14.203 | Methods of soliciting bids. | 14.408 | Award. |
| 14.203-1 | Transmittal to prospective bidders. | 14.408-1 | General. |
| 14.203-2 | Dissemination of information concerning invitations for bids. | 14.408-2 | Responsible bidder—reasonableness of price. |
| 14.203-3 | Master solicitation. | 14.408-3 | Prompt payment discounts. |
| 14.204 | Records of invitations for bids and records of bids. | 14.408-4 | Economic price adjustment. |
| 14.205 | Solicitation mailing lists. | 14.408-5 | [Reserved] |
| 14.205-1 | Establishment of lists. | 14.408-6 | Equal low bids. |
| 14.205-2 | Removal of names from solicitation mailing lists. | 14.408-7 | Documentation of award. |
| 14.205-3 | Reinstatement on solicitation mailing lists. | 14.408-8 | Protests against award. |
| 14.205-4 | Excessively long solicitation mailing lists. | 14.409 | Information to bidders. |
| 14.205-5 | Release of solicitation mailing lists. | 14.409-1 | Award of unclassified contracts. |
| 14.206 | [Reserved] | 14.409-2 | Award of classified contracts. |
| 14.207 | Pre-bid conference. | Subpart 14.5—Two-Step Sealed Bidding | |
| 14.208 | Amendment of invitation for bids. | 14.501 | General. |
| 14.209 | Cancellation of invitations before opening. | 14.502 | Conditions for use. |
| 14.210 | Qualified products. | 14.503 | Procedures. |
| 14.211 | Release of acquisition information. | 14.503-1 | Step one. |
| 14.212 | Economic purchase quantities (supplies). | 14.503-2 | Step two. |

This page intentionally left blank.

14.000 Scope of part.

This part prescribes—

- (a) The basic requirements of contracting for supplies and services (including construction) by sealed bidding;
- (b) The information to be included in the solicitation (invitation for bids);
- (c) Procedures concerning the submission of bids;
- (d) Requirements for opening and evaluating bids and awarding contracts; and
- (e) Procedures for two-step sealed bidding.

Subpart 14.1—Use of Sealed Bidding

14.101 Elements of sealed bidding.

Sealed bidding is a method of contracting that employs competitive bids, public opening of bids, and awards. The following steps are involved:

- (a) *Preparation of invitations for bids.* Invitations must describe the requirements of the Government clearly, accurately, and completely. Unnecessarily restrictive specifications or requirements that might unduly limit the number of bidders are prohibited. The invitation includes all documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.
- (b) *Publicizing the invitation for bids.* Invitations must be publicized through distribution to prospective bidders, posting in public places, and such other means as may be appropriate. Publicizing must occur a sufficient time before public opening of bids to enable prospective bidders to prepare and submit bids.
- (c) *Submission of bids.* Bidders must submit sealed bids to be opened at the time and place stated in the solicitation for the public opening of bids.
- (d) *Evaluation of bids.* Bids shall be evaluated without discussions.
- (e) *Contract award.* After bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, considering only price and the price-related factors included in the invitation.

14.102 [Reserved]

14.103 Policy.

14.103-1 General.

- (a) Sealed bidding shall be used whenever the conditions in 6.401(a) are met. This requirement applies to any proposed contract action under Part 6.
- (b) Current lists of bidders shall be maintained in accordance with 14.205.
- (c) Sealed bidding may be used for classified acquisitions if its use does not violate agency security requirements.
- (d) The policy for pricing modifications of sealed bid contract appears in 15.403-4(a)(1)(iii).

14.103-2 Limitations.

- No awards shall be made as a result of sealed bidding unless—
- (a) Bids have been solicited as required by Subpart 14.2;
 - (b) Bids have been submitted as required by Subpart 14.3;
 - (c) The requirements of 1.602-1(b) and Part 6 have been met; and
 - (d) An award is made to the responsible bidder (see 9.1) whose bid is responsive to the terms of the invitation for bids and is most advantageous to the Government, considering only price and the price related factors included in the invitation, as provided in Subpart 14.4.

14.104 Types of contracts.

Firm-fixed-price contracts shall be used when the method of contracting is sealed bidding, except that fixed-price contracts with economic price adjustment clauses may be used if authorized in accordance with 16.203 when some flexibility is necessary and feasible. Such clauses must afford all bidders an equal opportunity to bid.

14.105 Solicitations for informational or planning purposes.

(See 15.201(e).)

Subpart 14.2—Solicitation of Bids

14.201 Preparation of invitations for bids.

14.201-1 Uniform contract format.

(a) Contracting officers shall prepare invitations for bids and contracts using the uniform contract format outlined in Table 14-1 to the maximum practicable extent. The use of the format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by bidders and contractors. It need not be used for acquisition of the following:

- (1) Construction (see Part 36).
- (2) Shipbuilding (including design, construction, and conversion), ship overhaul, and ship repair.
- (3) Subsistence items.
- (4) Supplies or services requiring special contract forms prescribed elsewhere in this regulation that are inconsistent with the uniform contract format.
- (5) Firm-fixed-price or fixed-price with economic price adjustment acquisitions that use the simplified contract format (see 14.201-9).

(b) Information suitable for inclusion in invitations for bids under the uniform contract format shall also be included in invitations for bids not subject to that format if applicable.

(c) Solicitations to which the uniform contract format applies shall include Parts I, II, III, and IV. If any section of the uniform contract format does not apply, the contracting officer should so mark that section in the solicitation. Upon award, the contracting officer shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Award by acceptance of a bid on the award portion of Standard Form 33, Solicitation, Offer and Award (SF 33), GPO Form 320B, or Standard Form 1447, Solicitation/Contract (SF 1447), incorporates Section K, Representations, certifications, and other statements of bidders, in the resultant contract even though not physically attached.

TABLE 14-1—UNIFORM CONTRACT FORMAT

SECTION	TITLE
Part I—The Schedule	
A	Solicitation/contract form
B	Supplies or services and prices
C	Description/specifications
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements

SECTION	TITLE
Part II—Contract Clauses	
I	Contract clauses
Part III—List of Documents, Exhibits, and Other Attachments	
J	List of documents, exhibits, and other attachments
Part IV—Representations and Instructions	
K	Representations, certifications, and other statements of bidders
L	Instructions, conditions, and notices to bidders
M	Evaluation factors for award

14.201-2 Part I—The Schedule.

The contracting officer shall prepare the Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Prepare the invitation for bids on SF 33, unless otherwise permitted by this regulation. The SF 33 is the first page of the solicitation and includes Section A of the uniform contract format. When the SF 1447 is used as the solicitation document, the information in subdivisions (a)(2)(i) and (a)(2)(iv) of this subsection shall be inserted in block 9 of the SF 1447.

(2) When the SF 33 or SF 1447 is not used, include the following on the first page of the invitation for bids:

- (i) Name, address, and location of issuing activity, including room and building where bids must be submitted.
- (ii) Invitation for bids number.
- (iii) Date of issuance.
- (iv) Time specified for receipt of bids.
- (v) Number of pages.
- (vi) Requisition or other purchase authority.
- (vii) Requirement for bidder to provide its name and complete address, including street, city, county, state, and ZIP code.

(viii) A statement that bidders should include in the bid the address to which payment should be mailed, if that address is different from that of the bidder.

(b) *Section B, Supplies or services and prices.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, title or name identifying the supplies or services, and quantities (see Part 11). The SF 33 and the SF 1447 may be supplemented as necessary by the Optional Form 336 (OF 336), Continuation Sheet (53.302-336).

(c) *Section C, Description/specifications.* Include any description or specifications needed in addition to Section B to permit full and open competition (see Part 11).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see Part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Subpart 11.4, Delivery or Performance Schedules).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

14.201-3 Part II—Contract clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to apply to any resulting contract, if these clauses are not required to be included in any other section of the uniform contract format.

14.201-4 Part III—Documents, exhibits, and other attachments.

Section J, List of documents, exhibits, and other attachments. The contracting officer shall list the title, date, and number of pages for each attached document.

14.201-5 Part IV—Representations and instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of bidders.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by bidders.

(b) *Section L, Instructions, conditions, and notices to bidders.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide bidders. Invitations shall include the time and place for bid openings, and shall advise bidders that bids will be evaluated without discussions (see 52.214-10 and, for construction contracts, 52.214-19).

(c) *Section M, Evaluation factors for award.* Identify the price related factors other than the bid price that will be considered in evaluating bids and awarding the contract. See 14.201-8.

14.201-6 Solicitation provisions.

(a) The provisions prescribed in this subsection apply to preparation and submission of bids in general. See other

MMAR parts for provisions and clauses related to specific acquisition requirements.

(b) Insert in all invitations for bids the provisions at—

- (1) 52.214-3, Amendments to Invitations for Bids; and
- (2) 52.214-4, False Statements in Bids.

(c) Insert the following provisions in invitations for bids:

- (1) 52.214-5, Submission of Bids.
- (2) 52.214-6, Explanation to Prospective Bidders.
- (3) 52.214-7, Late Submissions, Modifications, and

Withdrawals of Bids.

(d) [Reserved]

(e) Insert in invitations for bids, except those for construction, the provisions at—

(1) 52.214-9, Failure to Submit Bid, except when using electronic data interchange methods not requiring solicitation mailing lists; and

(2) 52.214-10, Contract Award—Sealed Bidding.

(f) Insert in invitations for bids to which the uniform contract format applies, the provision at 52.214-12, Preparation of Bids.

(g)(1) Insert the provision at 52.214-13, Telegraphic Bids, in invitations for bids if the contracting officer decides to authorize telegraphic bids.

(2) Use the provision with its Alternate I in invitations for bids that are for perishable subsistence, and when the contracting officer considers that offerors will be unwilling to provide acceptance periods long enough to allow written confirmation.

(h) Insert the provision at 52.214-14, Place of Performance—Sealed Bidding, in invitations for bids except those in which the place of performance is specified by the Government.

(i) Insert the provision at 52.214-15, Period for Acceptance of Bids, in invitations for bids (IFB's) that are not issued on SF 33 or SF 1447 except IFB's—

(1) For construction work; or

(2) In which the Government specifies a minimum acceptance period.

(j) Insert the provision at 52.214-16, Minimum Bid Acceptance Period, in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified.

(k) [Reserved]

(l) Insert the provision at 52.214-18, Preparation of Bids—Construction, in invitations for bids for construction work.

(m) Insert the provision at 52.214-19, Contract Award—Sealed Bidding—Construction, in all invitations for bids for construction work.

(n) [Reserved]

(o)(1) Insert the provision at 52.214-20, Bid Samples, in invitations for bids if bid samples are required.

(2) If it appears that the conditions in 14.202-4(e)(1) will apply and the contracting officer anticipates granting waivers and—

(i) If the nature of the required product does not necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate I; or

(ii) If the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

(3) See 14.202-4(e)(2) regarding waiving the requirement for all bidders.

(p)(1) Insert the provision at 52.214-21, Descriptive Literature, in invitations for bids if—

(i) Descriptive literature is required to evaluate the technical acceptability of an offered product; and

(ii) The required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) See 14.202-5(d)(2) regarding waiving the requirement for all bidders.

(q) Insert the provision at 52.214-22, Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the Government.

(r) Insert the provision at 52.214-23, Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

(s) Insert the provision at 52.214-24, Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(t) Insert the provision at 52.214-25, Step Two of Two-Step Sealed Bidding, in invitations for bids issued under step two of two-step sealed bidding.

(u) Insert the provision at 52.214-30, Annual Representations and Certifications—Sealed Bidding, in invitations for bids if annual representations and certifications are used (see 14.213).

(v) Insert the provision at 52.214-31, Facsimile Bids, in solicitations if facsimile bids are authorized (see 14.202-7).

(w) Insert the provision at 52.214-34, Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102. It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at 52.214-35, Submission of Offers in U.S. Currency, in solicitations that include any of the clauses prescribed in 25.1101 or 25.1102, unless the contracting officer includes the clause at 52.225-17, Evaluation of Foreign Currency Offers, as prescribed in 25.1103(d). It may be included in other solicitations when the contracting officer decides that it is necessary.

14.201-7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-26, Audit and Records—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold at 15.403-4(a)(1) for submission of cost or pricing data.

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-27, Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.403-4(a)(1).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at 52.214-28, Subcontractor Cost or Pricing Data—Modifications— Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of cost or pricing data at 15.403-4(a)(1).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(d) When contracting by sealed bidding the contracting officer shall insert the clause at 52.214-29, Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

14.201-8 Price related factors.

The factors set forth in paragraphs (a) through (e) of this subsection may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable. (See 14.201-5(c).)

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see 47.303 and 47.305), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under 14.404.

(c) Advantages or disadvantages to the Government that might result from making more than one award (see 14.201-6(q)). The contracting officer shall assume, for the purpose of making multiple awards, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Federal, state, and local taxes (see Part 29).

(e) Origin of supplies, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 25).

14.201-9 Simplified contract format.

Policy. For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see 14.201-1). The contracting officer has flexibility in preparation and organization of the simplified contract format. However, the following format should be used to the maximum practical extent:

(a) *Solicitation/contract form.* Standard Form (SF) 1447, Solicitation/Contract, shall be used as the first page of the solicitation.

(b) *Contract schedule.* Include the following for each contract line item:

- (1) Contract line item number.
- (2) Description of supplies or services, or data sufficient to identify the requirement.
- (3) Quantity and unit of issue.
- (4) Unit price and amount.
- (5) Packaging and marking requirements.
- (6) Inspection and acceptance, quality assurance, and reliability requirements.
- (7) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.
- (8) Other item-peculiar information as necessary (e.g., individual fund citations).

(c) *Clauses.* Include the clauses required by this regulation. Additional clauses shall be incorporated only when considered absolutely necessary to the particular acquisition.

(d) *List of documents and attachments.* Include if necessary.

(e) *Representations and instructions—*(1) *Representations and certifications.* Insert those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) *Instructions, conditions, and notices.* Include the solicitation provisions required by 14.201-6. Include any other information/instructions necessary to guide offerors.

(3) *Evaluation factors for award.* Insert all evaluation factors and any significant subfactors for award.

(4) Upon award, the contracting officer need not physically include the provisions in paragraphs (e)(1), (2), and (3) of this subsection in the resulting contract, but shall retain them in the contract file. Award by acceptance of a bid on the award portion of SF 1447 incorporates the representations, certifications, and other statements of bidders in the resultant contract even though not physically attached.

14.202 General rules for solicitation of bids.

14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see 36.213-3(a).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days is recommended.

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

- (1) Degree of urgency;
- (2) Complexity of requirement;
- (3) Anticipated extent of subcontracting;
- (4) Whether use was made of presolicitation notices;
- (5) Geographic distribution of bidders; and
- (6) Normal transmittal time for both invitations and bids.

14.202-2 Telegraphic bids.

(a) Telegraphic bids and mailgrams shall be authorized only when—

- (1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or
- (2) Prices are subject to frequent changes.

(b) If telegraphic bids are to be authorized, see 14.201-6(g). Unauthorized telegraphic bids shall not be considered (see 14.301(b)).

14.202-3 Bid envelopes.

(a) Postage or envelopes bearing “Postage and Fees Paid” indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders.

(b) To provide for ready identification and proper handling of bids, Optional Form 17, Offer Label, may be furnished with

each bid set. The form may be obtained from the General Services Administration (see 53.107).

14.202-4 Bid samples.

(a) *Policy.* (1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder's ability to produce the required items.

(3) Bid samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification, if listed in accordance with subdivision (e)(1)(ii) of this section.

(4) Bids will be rejected as nonresponsive if the sample fails to conform to each of the characteristics listed in the invitation.

(b) *When to use.* The use of bid samples would be appropriate for products that must be suitable from the standpoint of balance, facility of use, general "feel," color, pattern, or other characteristics that cannot be described adequately in the specification. However, when more than a minor portion of the characteristics of the product cannot be adequately described in the specification, products should be acquired by two-step sealed bidding or negotiation, as appropriate.

(c) *Justification.* The reasons why acceptable products cannot be acquired without the submission of bid samples shall be set forth in the contract file, except where the submission is required by the formal specifications (Federal, Military, or other) applicable to the acquisition.

(d) *Requirements for samples in invitations for bids.*

(1) Invitations for bids shall—

(i) State the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; and

(ii) List all the characteristics for which the samples will be examined.

(2) If bid samples are required, see 14.201-6(o).

(e) *Waiver of requirement for bid samples.* (1) The requirement for furnishing bid samples may be waived when a bidder offers a product previously or currently being contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids. When the requirement may be waived, see 14.201-6(o)(2).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification has been authorized, a statement shall be included in the invitation that notwithstanding the requirements of the specification, samples will not be required.

(f) *Unsolicited samples.* Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder's intention was to qualify the bid. (See 14.404-2(d) if the qualification does not conform to the solicitation.)

(g) *Handling bid samples.* (1) Samples that are not destroyed in testing shall be returned to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Disposition instructions shall be requested from bidders and samples disposed of accordingly.

(3) Samples ordinarily will be returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, they will be disposed of as scrap unless the bidder requests their return.

14.202-5 Descriptive literature.

(a) *Policy.* Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) *Justification.* The contracting officer must document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) *Requirements of invitation for bids.* (1) The invitation must clearly state—

(i) What descriptive literature the bidders must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see 14.201-6(p).

(d) *Waiver of requirement for descriptive literature.* (1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see 14.201-6(p)(2).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature furnished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the invitation for bids, the procedures set forth in 14.202-4(f) must be followed.

14.202-6 Final review of invitations for bids.

Each invitation for bids shall be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. Contracting officers are responsible for the reviews.

14.202-7 Facsimile bids.

(a) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile bids (see 14.201-6(v)). In determining whether or not to authorize facsimile bids, the contracting officer shall consider factors such as—

- (1) Anticipated bid size and volume;
- (2) Urgency of the requirement;
- (3) Frequency of price changes;
- (4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and
- (5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile bids, and ensuring their timely delivery to the bids opening location.

(b) If facsimile bids are authorized, contracting officers may, after the date set for bid opening, request the apparently successful offeror to provide the complete, original signed bid.

14.202-8 Electronic bids.

In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

14.203 Methods of soliciting bids.

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices shall be transmitted as specified in 14.205, and shall be provided to others in accordance with 5.102. When a contracting office is located in the United States, any solicitation sent to a prospective bidder located at a foreign address shall be sent by electronic data interchange or international air mail if security classification permits.

14.203-2 Dissemination of information concerning invitations for bids.

(a) Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsis through the Governmentwide point of entry (GPE) are set forth in 5.101 and Subpart 5.2.

(b) For procedures that apply to publicizing notices through the GPE to determine whether commercial sources are available, see 5.205(e) and 7.303(b).

14.203-3 Master solicitation.

The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations must reference the date of the current master solicitation and identify any changes. The contracting officer must—

- (a) Make available copies of the master solicitation on request; and
- (b) Provide the cognizant contract administration activity a current copy of the master solicitation.

14.204 Records of invitations for bids and records of bids.

(a) Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items.

(b) The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

14.205 Solicitation mailing lists.

14.205-1 Establishment of lists.

(a) Solicitation mailing lists shall be established by contracting activities to assure access to adequate sources of supplies and services. This rule need not be followed; however, when (1) the requirements of the contracting office can be obtained through use of simplified acquisition procedures

(see Part 13); (2) the requirements are nonrecurring; or (3) electronic commerce methods are used that transmit solicitations or notices of procurement opportunities automatically to all interested sources. Lists may be established as a central list for use by all contracting offices within the contracting activity, or as local lists maintained by each contracting office.

(b) All eligible and qualified concerns that have submitted solicitation mailing list applications, or that the contracting office considers capable of filling the requirements of a particular acquisition, shall be placed on the appropriate solicitation mailing list. (See also 5.403(b).) Planned producers under the Industrial Preparedness Planning Program shall be included on lists for their planned items. Prospective bidders shall be notified that they have been added to solicitation mailing lists in accordance with agency procedures. The issuance of a solicitation within a reasonable time may be considered appropriate notification. Applicants shall be notified if they do not meet the criteria for placement on the list.

(c) The names of prospective bidders who are furnished invitations in response to their requests shall be added to the list of those initially mailed copies of a particular solicitation, so that they will be furnished copies of any solicitation amendments, etc. However, when it is known that the request was made by a person or an organization that is known not to be a prospective bidder, no entry shall be made on the list.

(d)(1) Standard Form 129, Solicitation Mailing List Application, shall be used for obtaining information needed to establish and maintain lists. Supplemental information, where required, may be obtained as specified in agency implementing regulations.

(2) The application shall be submitted and signed by the supplier, as distinguished from an agent of the supplier. However, suppliers are not precluded from designating, in the Standard Form 129, their agents to receive solicitations.

(3) In order to enable suppliers to indicate readily the items on which they will generally desire to submit bids, there shall be attached to Standard Form 129 forwarded to suppliers for completion, a list of items, or item groups, or an index to such listing of the items, acquired by the contracting activity maintaining the list, which are considered applicable to the supplier's type of business.

(e) Business concerns listed on solicitation mailing lists shall be identified by size in accordance with 19.102. Size status should be established before listing a business concern on a list. Disadvantaged and women-owned business concern designations shall be shown on the list whenever noted on the Standard Form 129 submitted by a particular concern.

14.205-2 Removal of names from solicitation mailing lists.

(a) The name of each concern failing to either (1) submit a bid, (2) respond to a presolicitation notice (see 14.205-4(c)), or (3) otherwise respond to an invitation for bids may be removed from the solicitation mailing list without notice to

the concern. However, the removal shall be limited to the items involved in the invitation or notice. When a concern fails to respond to two consecutive invitations or presolicitation notices, its name shall be removed from the list to the extent indicated in this paragraph. However, in individual cases, concerns failing to respond may be retained on a list if retention is in the best interest of the Government. Both actual bids and written requests for retention on the lists shall be deemed to be "responses" to invitations for bids or presolicitation notices. If this procedure results in limited solicitation mailing lists, the contracting officer should request an explanation from the concerns that did not respond.

(b) Concerns that have been debarred or suspended from Government contracts or otherwise determined to be ineligible to receive an award shall be removed from solicitation mailing lists to the extent required by the debarment, suspension, or other determination of ineligibility.

14.205-3 Reinstatement on solicitation mailing lists.

Concerns that have been removed from solicitation mailing lists may be reinstated (a) upon written request, (b) by filing a new application on Standard Form 129, or (c) by the submission of a bid. Debarred or suspended firms shall not be reinstated during the period of a debarment or suspension.

14.205-4 Excessively long solicitation mailing lists.

(a) *General.* Solicitation mailing lists should be used to promote competition commensurate with the dollar value of the proposed contract. As much of the solicitation mailing list shall be used as is compatible with efficiency and economy in securing competition. Where the number of bidders on a mailing list is excessive in relation to a specific acquisition, the list may be reduced consistent with this paragraph and paragraphs (b) and (c) of this subsection. Nonetheless, solicitations should be furnished to others upon request, in accordance with 5.102. Also, bids shall not be disregarded merely because the bidder was not formally invited to bid.

(b) *Rotation of lists.* By using different portions of a list for separate acquisitions, solicitation mailing lists may be rotated. However, considerable judgment must be exercised in determining whether the size of the acquisition justifies the rotation. The use of a presolicitation notice (see paragraph (c) of this subsection), time permitting, also should be considered. In rotating a list, the interests of small, small disadvantaged, and women-owned small businesses (see 19.202-4) shall be considered. Whenever a list is rotated, bids shall be solicited from (1) the previously successful bidder, (2) prospective suppliers who have been added to the solicitation mailing list since the last solicitation, and (3) concerns on the segment of the list selected for use in a particular acquisition. However, the rule does not apply when such action would be precluded by use of a total set-aside (see Part 19).

(c) *Presolicitation notices.* In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns on the solicitation mailing list. The notice shall (1) specify the final date for receipt of requests for a complete bid set, (2) briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation, and (3) notify concerns that, if no bid is to be submitted, they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved. Drawings, plans, and specifications normally will not be furnished with the presolicitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice. This procedure is particularly suitable when invitations for bids and solicitation mailing lists are lengthy.

14.205-5 Release of solicitation mailing lists.

(a) Contracting activities shall make the central and local solicitation mailing lists established under this part available to the public in response to written requests made in accordance with agency regulations implementing Subpart 24.2.

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, bidders, and others having a bona fide interest will be supplied upon request with a list of all prospective bidders furnished copies of the plans and specifications. Contracting offices may require written requests and establish appropriate procedures.

14.206 [Reserved]

14.207 Pre-bid conference.

A pre-bid conference may be used, generally in a complex acquisition, as a means of briefing prospective bidders and explaining complicated specifications and requirements to them as early as possible after the invitation has been issued and before the bids are opened. It shall never be used as a substitute for amending a defective or ambiguous invitation. The conference shall be conducted in accordance with the procedure prescribed in 15.201.

14.208 Amendment of invitation for bids.

(a) If it becomes necessary to make changes in quantity, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by amendment of the invitation for bids using Standard Form 30, Amendment of Solicitation/ Modification of Contract. The fact that a change was mentioned at a pre-bid conference does not relieve the necessity for issuing an amendment. Amendments shall be sent, before the time for

bid opening, to everyone to whom invitations have been furnished and shall be displayed in the bid room.

(b) Before amending an invitation for bids, the period of time remaining until bid opening and the need to extend this period shall be considered. When only a short time remains before the time set for bid opening, consideration should be given to notifying bidders of an extension of time by telegrams or telephone. Such extension must be confirmed in the amendment.

(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders as an amendment to the invitation (1) if such information is necessary for bidders to submit bids or (2) if the lack of such information would be prejudicial to uninformed bidders. The information shall be furnished even though a pre-bid conference is held. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

14.209 Cancellation of invitations before opening.

(a) The cancellation of an invitation for bids usually involves a loss of time, effort, and money spent by the Government and bidders. Invitations should not be cancelled unless cancellation is clearly in the public interest; *e.g.*,

(1) Where there is no longer a requirement for the supplies or services; or

(2) Where amendments to the invitation would be of such magnitude that a new invitation is desirable.

(b) When an invitation issued other than electronically is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom invitations were issued. When an invitation issued electronically is cancelled, a general notice of cancellation shall be posted electronically, the bids received shall not be viewed, and the bids shall be purged from primary and backup data storage systems.

(c) The notice of cancellation shall—(1) identify the invitation for bids by number and short title or subject matter, (2) briefly explain the reason the invitation is being cancelled, and (3) where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of supplies or services involved. Cancellations shall be recorded in accordance with 14.403(d).

14.210 Qualified products.

(See Subpart 9.2.)

14.211 Release of acquisition information.

(a) *Before solicitation.* Information concerning proposed acquisitions shall not be released outside the Government before solicitation except for presolicitation notices in accor-

dance with 14.205-4(c) or 36.213-2, or long-range acquisition estimates in accordance with 5.404, or synopses in accordance with 5.201. Within the Government, such information shall be restricted to those having a legitimate interest. Releases of information shall be made (1) to all prospective bidders, and (2) as nearly as possible at the same time, so that one prospective bidder shall not be given unfair advantage over another. See 3.104 regarding requirements for proprietary and source selection information including access to and disclosure thereof.

(b) *After solicitation.* Discussions with prospective bidders regarding a solicitation shall be conducted and technical or other information shall be transmitted only by the contracting officer or superiors having contractual authority or by others specifically authorized. Such personnel shall not furnish any information to a prospective bidder that alone or together with other information may afford an advantage over others. However, general information that would not be prejudicial to other prospective bidders may be furnished upon request; *e.g.*, explanation of a particular contract clause or a particular condition of the schedule in the invitation for bids, and more specific information or clarifications may be furnished by amending the solicitation (see 14.208).

14.212 Economic purchase quantities (supplies).

Contracting officers shall comply with the economic purchase quantity planning requirements for supplies in Subpart 7.2. See 7.203 for instructions regarding use of the

provision at 52.207-4, Economic Purchase Quantity—Supplies, and 7.204 for guidance on handling responses to that provision.

14.213 Annual submission of representations and certifications.

(a) Submission of offeror representations and certifications on an annual basis, as an alternative to submission in each solicitation, may be authorized by agencies subject to the requirements of this section. The decision to use annual representations and certifications shall be made in accordance with agency procedures.

(b) In accordance with agency procedures, each contracting office utilizing annual representations and certifications shall establish procedures and assign responsibilities for centrally requesting, receiving, storing, verifying and updating offeror's annual submissions. Generally, the representations and certifications shall be effective for a period of 1 year from date of signature.

(c) The contracting officer shall not include in individual solicitations the full text of provisions that are contained in the annual representations and certifications.

(d) Offerors shall make changes that affect only one solicitation by completing the appropriate section of the provision at 52.214-30, Annual Representations and Certifications—Sealed Bidding.

Subpart 14.3—Submission of Bids

14.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids. Such compliance enables bidders to stand on an equal footing and maintain the integrity of the sealed bidding system.

(b) Telegraphic bids shall not be considered unless permitted by the invitation. The term “telegraphic bids” means bids submitted by telegram or by mailgram.

(c) Facsimile bids shall not be considered unless permitted by the solicitation (see 14.202-7).

(d) Bids should be filled out, executed, and submitted in accordance with the instructions in the invitation. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if—

(1) The bidder accepts all the terms and conditions of the invitation; and

(2) Award on the bid would result in a binding contract with terms and conditions that do not vary from the terms and conditions of the invitation.

(e) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

14.302 Bid submission.

(a) Bids shall be submitted so that they will be received in the office designated in the invitation for bids (referred to in paragraphs (b) and (c) of this section as the “designated office”) not later than the exact time set for opening of bids.

(b) Except as specified in paragraph (c) of this section, if telegraphic bids are authorized, a telegraphic bid that is communicated by means of a telephone call to the designated office shall be considered if—

(1) Agency regulations authorize such consideration;

(2) The telephone call is made by the telegraph office that received the telegraphic bid;

(3) The telephone call is received by the designated office not later than the time set for the bid opening;

(4) The telegraph office that received the telegraphic bid sends the designated office the telegram that formed the basis for the telephone call;

(5) The telegram indicates on its face that it was received in the telegraph office before the telephone call was received by the designated office; and

(6) The bid in the telegram is identical in all essential respects to the bid received in the telephone call from the telegraph office.

(c) If the conditions in paragraph (b) of this section apply and the bid received by telephone is the apparent low bid, award may not be made until the telegram is received by the designated office; however, if the telegram is not received by

the designated office within 5 days after the bid opening date, the bid shall be rejected.

14.303 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by any method authorized by the solicitation, if notice is received in the office designated in the solicitation not later than the exact time set for opening of bids. Unless proscribed by agency regulations, a telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office shall be considered. However, the message shall be confirmed by the telegraph company by sending a copy of the written telegram that formed the basis for the telephone call. If the solicitation authorizes facsimile bids, bids may be modified or withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision prescribed in 14.201-6(v). Modifications received by telegram (including a record of those telephoned by the telegraph company) or facsimile shall be sealed in an envelope by a proper official. The official shall write on the envelope (1) the date and time of receipt and by whom, and (2) the number of the invitation for bids, and shall sign the envelope. No information contained in the envelope shall be disclosed before the time set for bid opening.

(b) A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for opening of bids, the identity of the persons requesting withdrawal is established and that person signs a receipt for the bid.

(c) Upon withdrawal of an electronically transmitted bid, the data received shall not be viewed and shall be purged from primary and backup data storage systems.

14.304 Submission, modification, and withdrawal of bids.

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bid (IFB) by the time specified in the IFB. They may use any transmission method authorized by the IFB (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal of a bid received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, 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.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB, and urgent Government requirements preclude amendment of the bid opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the IFB on the first work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB 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 at 52.214-31, 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. Upon withdrawal of an electronically transmitted bid, the data received must not be viewed and, where practicable, must be purged from primary and backup data storage systems.

(f) The contracting officer must promptly notify any bidder if its bid, modification, or withdrawal was received late, and must inform the bidder whether its bid will be considered, unless contract award is imminent and the notices prescribed in 14.409 would suffice.

(g) Late bids and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful bids. However, any bid bond or guarantee must be returned.

(h) If available, the following must be included in the contract files for each late bid, modification, or withdrawal:

(1) The date and hour of receipt.

(2) A statement, with supporting rationale, regarding whether the bid was considered for award.

(3) The envelope, wrapper, or other evidence of the date of receipt.

Subpart 14.4—Opening of Bids and Award of Contract

14.400 Scope of subpart.

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

14.401 Receipt and safeguarding of bids.

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

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

14.402 Opening of bids.

14.402-1 Unclassified bids.

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

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

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

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

14.402-2 Classified bids.

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

14.402-3 Postponement of openings.

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

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

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

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

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

14.403 Recording of bids.

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

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

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

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

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

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

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

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

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

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

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

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

(2) Specifications have been revised;

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

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

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

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

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

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

(9) A cost comparison shows that performance by the Government is more economical; or

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

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

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

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

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

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

(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

14.404-2 Rejection of individual bids.

(a) Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected.

(d) A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price shall be "price in effect at time of delivery;"

(3) States a price but qualifies it as being subject to "price in effect at time of delivery;"

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

(e) A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see 15.404-1(g)).

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected unless a compelling reason determination is made (see Subpart 9.4).

(i) Low bids received from concerns determined to be not responsible pursuant to subpart 9.1 shall be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(j) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in 28.101-4.

(k) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by 41 U.S.C. 15 or 31 U.S.C. 3727.

14.404-3 Notice to bidders of rejection of all bids.

When it is determined necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for such action.

14.404-4 Restrictions on disclosure of descriptive literature.

When a bid is accompanied by descriptive literature (as defined in 2.101), and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see 14.202-5(e)).

14.404-5 All or none qualifications.

Unless the solicitation provides otherwise, a bid may be responsive notwithstanding that the bidder specifies that award will be accepted only on all, or a specified group, of the items. Bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

14.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The contracting officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include failure of a bidder to—

(a) Return the number of copies of signed bids required by the invitation;

(b) Furnish required information concerning the number of its employees;

(c) Sign its bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

(d) Acknowledge receipt of an amendment to an invitation for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon; and

(e) Execute the representations with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at 52.222-22, Previous Contracts and Compliance Reports, and 52.222-25, Affirmative Action Compliance.

14.406 Receipt of an unreadable electronic bid.

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

14.407 Mistakes in bids.**14.407-1 General.**

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section 14.407. Such actions shall be taken before award.

14.407-2 Apparent clerical mistakes.

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

(1) Obvious misplacement of a decimal point;

(2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and

(4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

14.407-3 Other mistakes disclosed before award.

In order to minimize delays in contract awards, administrative determinations may be made as described in this 14.407-3 in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in 14.407-2 or that may be otherwise available.

(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the

mistake; provided, that if this correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(b) If—

(1) A bidder requests permission to withdraw a bid rather than correct it;

(2) The evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended; and

(3) The bid, both as uncorrected and as corrected, is the lowest received, the agency head may make a determination to correct the bid and not permit its withdrawal.

(c) If, under paragraph (a) or (b) of this subsection, (1) the evidence of a mistake is clear and convincing only as to the mistake but not as to the intended bid, or (2) the evidence reasonably supports the existence of a mistake but is not clear and convincing, an official above the contracting officer, unless otherwise provided by agency procedures, may make a determination permitting the bidder to withdraw the bid.

(d) If the evidence does not warrant a determination under paragraph (a), (b), or (c) of this section, the agency head may make a determination that the bid be neither withdrawn nor corrected.

(e) Heads of agencies may delegate their authority to make the determinations under paragraphs (a), (b), (c), and (d) of this 14.407-3 to a central authority, or a limited number of authorities as necessary, in their agencies, without power of redelegation.

(f) Each proposed determination shall have the concurrence of legal counsel within the agency concerned before issuance.

(g) Suspected or alleged mistakes in bids shall be processed as follows. A mere statement by the administrative officials that they are satisfied that an error was made is insufficient.

(1) The contracting officer shall immediately request the bidder to verify the bid. Action taken to verify bids must be sufficient to reasonably assure the contracting officer that the bid as confirmed is without error, or to elicit the allegation of a mistake by the bidder. To assure that the bidder will be put on notice of a mistake suspected by the contracting officer, the bidder should be advised as appropriate—

(i) That its bid is so much lower than the other bids or the Government's estimate as to indicate a possibility of error;

(ii) Of important or unusual characteristics of the specifications;

(iii) Of changes in requirements from previous purchases of a similar item; or

(iv) Of any other information, proper for disclosure, that leads the contracting officer to believe that there is a mistake in bid.

(2) If the bid is verified, the contracting officer shall consider the bid as originally submitted. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids in accordance with 14.404-1(d). If the bidder whose bid is believed erroneous does not (or cannot) grant an extension of time, the bid shall be considered as originally submitted (but see paragraph (g)(5) of this section). If the bidder alleges a mistake, the contracting officer shall advise the bidder to make a written request to withdraw or modify the bid. The request must be supported by statements (sworn statements, if possible) and shall include all pertinent evidence such as the bidder's file copy of the bid, the original worksheets and other data used in preparing the bid, subcontractors' quotations, if any, published price lists, and any other evidence that establishes the existence of the error, the manner in which it occurred, and the bid actually intended.

(3) When the bidder furnishes evidence supporting an alleged mistake, the contracting officer shall refer the case to the appropriate authority (see paragraph (e) of this section) together with the following data:

(i) A signed copy of the bid involved.

(ii) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(iii) An abstract or record of the bids received.

(iv) The written request by the bidder to withdraw or modify the bid, together with the bidder's written statement and supporting evidence.

(v) A written statement by the contracting officer setting forth—

(A) A description of the supplies or services involved;

(B) The expiration date of the bid in question and of the other bids submitted;

(C) Specific information as to how and when the mistake was alleged;

(D) A summary of the evidence submitted by the bidder;

(E) In the event only one bid was received, a quotation of the most recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services;

(F) Any additional pertinent evidence; and

(G) A recommendation that either the bid be considered for award in the form submitted, or the bidder be authorized to withdraw or modify the bid.

(4) When time is of the essence because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the appropriate authority. Ordinarily, the contracting officer will not refer mistake in bid cases by telegraph or telephone to the appropriate authority

when the determination set forth in paragraphs (a) or (b) of this section is applicable, since actual examination is generally necessary to determine whether the evidence presented is clear and convincing.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless (i) the amount of the bid is so far out of line with the amounts of other bids received, or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or (ii) there are other indications of error so clear, as to reasonably justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders. Attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(h) Each agency shall maintain records of all determinations made in accordance with this subsection 14.407-3, the facts involved, and the action taken in each case. Copies of all such determinations shall be included in the file.

(i) Nothing contained in this subsection 14.407-3 prevents an agency from submitting doubtful cases to the Comptroller General for advance decision.

14.407-4 Mistakes after award.

If a contractor's discovery and request for correction of a mistake in bid is not made until after the award, it shall be processed under the procedures of Subpart 33.2 and the following:

(a) When a mistake in a contractor's bid is not discovered until after award, the mistake may be corrected by contract modification if correcting the mistake would be favorable to the Government without changing the essential requirements of the specifications.

(b) In addition to the cases contemplated in paragraph (a) of this section or as otherwise authorized by law, agencies are authorized to make a determination—

- (1) To rescind a contract;
- (2) To reform a contract—

(i) To delete the items involved in the mistake; or

(ii) To increase the price if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids; or

(3) That no change shall be made in the contract as awarded, if the evidence does not warrant a determination under subparagraph (b)(1) or (2) of this section.

(c) Determinations under paragraph (b)(1) and (2) of this section may be made only on the basis of clear and convincing evidence that a mistake in bid was made. In addition, it must be clear that the mistake was—

(1) Mutual; or

(2) If unilaterally made by the contractor, so apparent as to have charged the contracting officer with notice of the probability of the mistake.

(d) Each proposed determination shall be coordinated with legal counsel in accordance with agency procedures.

(e) Mistakes alleged or disclosed after award shall be processed as follows:

(1) The contracting officer shall request the contractor to support the alleged mistake by submission of written statements and pertinent evidence, such as—

(i) The contractor's file copy of the bid,

(ii) The contractor's original worksheets and other data used in preparing the bid,

(iii) Subcontractors' and suppliers' quotations, if any,

(iv) Published price lists, and

(v) Any other evidence that will serve to establish the mistake, the manner in which the mistake occurred, and the bid actually intended.

(2) The case file concerning an alleged mistake shall contain the following:

(i) All evidence furnished by the contractor in support of the alleged mistake.

(ii) A signed statement by the contracting officer—

(A) Describing the supplies or services involved;

(B) Specifying how and when the mistake was alleged or disclosed;

(C) Summarizing the evidence submitted by the contractor and any additional evidence considered pertinent;

(D) Quoting, in cases where only one bid was received, the most recent contract price for the supplies or services involved, or in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for the estimate;

(E) Setting forth the contracting officer's opinion whether a bona fide mistake was made and whether the contracting officer was, or should have been, on constructive notice of the mistake before the award, together with the reasons for, or data in support of, such opinion;

(F) Setting forth the course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and if other than a change in contract price is recommended, the manner by which the supplies or services will otherwise be acquired; and

(G) Disclosing the status of performance and payments under the contract, including contemplated performance and payments.

(iii) A signed copy of the bid involved.

(iv) A copy of the invitation for bids and any specifications or drawings relevant to the alleged mistake.

(v) An abstract of written record of the bids received.

(vi) A written request by the contractor to reform or rescind the contract, and copies of all other relevant correspondence between the contracting officer and the contractor concerning the alleged mistake.

(vii) A copy of the contract and any related change orders or supplemental agreements.

(f) Each agency shall include in the contract file a record of—

(1) All determinations made in accordance with this 14.407-4;

(2) The facts involved; and

(3) The action taken in each case.

14.408 Award.

14.408-1 General.

(a) The contracting officer shall make a contract award (1) by written or electronic notice, (2) within the time for acceptance specified in the bid or an extension (see 14.404-1(d)), and (3) to that responsible bidder whose bid, conforming to the invitation, will be most advantageous to the Government, considering only price and the price-related factors (see 14.201-8) included in the invitation. Award shall not be made until all required approvals have been obtained and the award otherwise conforms with 14.103-2.

(b) If less than three bids have been received, the contracting officer shall examine the situation to ascertain the reasons for the small number of responses. Award shall be made notwithstanding the limited number of bids. However, the contracting officer shall initiate, if appropriate, corrective action to increase competition in future solicitations for the same or similar items, and include a notation of such action in the records of the invitation for bids (see 14.204).

(c)(1) Award shall be made by mailing or otherwise furnishing a properly executed award document to the successful bidder.

(2) When a notice of award is issued, it shall be followed as soon as possible by the formal award.

(3) When more than one award results from any single invitation for bids, separate award documents shall be suitably numbered and executed.

(4) When an award is made to a bidder for less than all of the items that may be awarded to that bidder and additional items are being withheld for subsequent award, the award shall state that the Government may make subsequent awards on those additional items within the bid acceptance period.

(5) All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document. The award is an acceptance of the bid, and the bid and the award constitute the contract.

(d)(1) Award is generally made by using the Award portion of Standard Form (SF) 33, Solicitation, Offer, and Award, or SF 1447, Solicitation/Contract (see 53.214). If an offer from

a SF 33 leads to further changes, the resulting contract shall be prepared as a bilateral document on SF 26, Award/Contract.

(2) Use of the Award portion of SF 33, SF 26, or SF 1447, does not preclude the additional use of informal documents, including telegrams or electronic transmissions, as notices of awards.

14.408-2 Responsible bidder—reasonableness of price.

(a) The contracting officer shall determine that a prospective contractor is responsible (see Subpart 9.1) and that the prices offered are reasonable before awarding the contract. The price analysis techniques in 15.404-1(b) may be used as guidelines. In each case the determination shall be made in the light of all prevailing circumstances. Particular care must be taken in cases where only a single bid is received.

(b) The price analysis shall consider whether bids are materially unbalanced (see 15.404-1(g)).

14.408-3 Prompt payment discounts.

(a) Prompt payment discounts shall not be considered in the evaluation of bids. However, any discount offered will form a part of the award, and will be taken by the payment center if payment is made within the discount period specified by the bidder. As an alternative to indicating a discount in conjunction with the offer, bidders may prefer to offer discounts on individual invoices.

(b) See 32.111(c)(1), which prescribes the contract clause at 52.232-8, Discounts for Prompt Payment.

14.408-4 Economic price adjustment.

(a) *Bidder proposes economic price adjustment.* (1) When a solicitation does not contain an economic price adjustment clause but a bidder proposes one with a ceiling that the price will not exceed, the bid shall be evaluated on the basis of the maximum possible economic price adjustment of the quoted base price.

(2) If the bid is eligible for award, the contracting officer shall request the bidder to agree to the inclusion in the award of an approved economic price adjustment clause (see 16.203) that is subject to the same ceiling. If the bidder will not agree to an approved clause, the award may be made on the basis of the bid as originally submitted.

(3) Bids that contain economic price adjustments with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) *Government proposes economic price adjustment.* (1) When an invitation contains an economic price adjustment clause and no bidder takes exception to the provisions, bids shall be evaluated on the basis of the quoted prices without the allowable economic price adjustment being added.

(2) When a bidder increases the maximum percentage of economic price adjustment stipulated in the invitation or limits the downward economic price adjustment provisions of the invitation, the bid shall be rejected as nonresponsive.

(3) When a bid indicates deletion of the economic price adjustment clause, the bid shall be rejected as nonresponsive since the downward economic price adjustment provisions are thereby limited.

(4) When a bidder decreases the maximum percentage of economic price adjustment stipulated in the invitation, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, after evaluation, if the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

14.408-5 [Reserved]

14.408-6 Equal low bids.

(a) Contracts shall be awarded in the following order of priority when two or more low bids are equal in all respects:

- (1) Small business concerns that are also labor surplus area concerns.
- (2) Other small business concerns.
- (3) Other business concerns.

(b) If two or more bidders still remain equally eligible after application of paragraph (a) of this section, award shall be made by a drawing by lot limited to those bidders. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of the witnesses and the person supervising the drawing.

(c) When an award is to be made by using the priorities under this 14.408-6, the contracting officer shall include a written agreement in the contract that the contractor will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority used to break the tie or select bids for a drawing by lot.

14.408-7 Documentation of award.

(a) The contracting officer shall document compliance with 14.103-2 in the contract file.

(b) The documentation shall either state that the accepted bid was the lowest bid received, or list all lower bids with reasons for their rejection in sufficient detail to justify the award.

(c) When an award is made after receipt of equal low bids, the documentation shall describe how the tie was broken.

14.408-8 Protests against award.

(See Subpart 33.1, Protests.)

14.409 Information to bidders.

14.409-1 Award of unclassified contracts.

(a)(1) The contracting officer shall as a minimum (subject to any restrictions in Subpart 9.4)—

(i) Notify each unsuccessful bidder in writing or electronically within three days after contract award, that its bid was not accepted. “Day,” for purposes of the notification process, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday;

(ii) Extend appreciation for the interest the unsuccessful bidder has shown in submitting a bid; and

(iii) When award is made to other than a low bidder, state the reason for rejection in the notice to each of the unsuccessful low bidders.

(b) Information included in paragraph (a)(2) of this subsection shall be provided to any unsuccessful bidder upon request except when multiple awards have been made and furnishing information on the successful bids would require so much work as to interfere with normal operations of the contracting office. In such circumstances, only information concerning location of the abstract of offers need be given.

(c) When a request is received concerning an unclassified invitation from an inquirer who is neither a bidder nor a representative of a bidder, the contracting officer should make every effort to furnish the names of successful bidders and, if requested, the prices at which awards were made. However, when such requests require so much work as to interfere with the normal operations of the contracting office, the inquirer will be advised where a copy of the abstract of offers may be seen.

(d) Requests for records shall be governed by agency regulations implementing Subpart 24.2.

14.409-2 Award of classified contracts.

In addition to 14.409-1, if classified information was furnished or created in connection with the solicitation, the contracting officer shall advise the unsuccessful bidders, including any who did not bid, to take disposition action in accordance with agency procedures. The name of the successful bidder and the contract price will be furnished to unsuccessful bidders only upon request. Information regarding a classified award shall not be furnished by telephone.

Subpart 14.5—Two-Step Sealed Bidding

14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with Subparts 14.3 and 14.4.

14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government-owned facilities or special tooling to be made available to the successful bidder

(3) A first or subsequent production quantity is being acquired under a performance specification.

14.503 Procedures.

14.503-1 Step one.

(a) Requests for technical proposals shall be distributed in accordance with 14.203-1. In addition, the request shall be synopsisized in accordance with Part 5. The request must include, as a minimum, the following:

(1) A description of the supplies or services required.

(2) A statement of intent to use the two-step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see 14.201-6(r)).

(7) A statement that—

(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and

(ii) Each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that—

(i) Offerors should submit proposals that are acceptable without additional explanation or information,

(ii) The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and

(iii) The Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(c) Upon receipt, the contracting officer shall—

(1) Safeguard proposals against disclosure to unauthorized persons;

(2) Accept and handle data marked in accordance with 15.609 as provided in that section; and

(3) Remove any reference to price or cost.

(d) The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(e)(1) Evaluations shall be based on the criteria in the request for proposals but not consideration of responsibility as defined in 9.1, Proposals, shall be categorized as—

(i) Acceptable;

(ii) Reasonably susceptible of being made acceptable; or

(iii) Unacceptable.

(2) Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(f)(1) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the contracting officer shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The contracting office shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

(2) In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of

their proposals submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(g) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the contracting officer shall debrief unsuccessful offerors (see 15.505 and 15.506).

(h) Late technical proposals are governed by 15.208 (b), (c), and (f).

(i) If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.

14.503-2 Step two.

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

(1) Be issued only to those offerors submitting acceptable technical proposals in step one;

(2) Include the provision prescribed in 14.201-6(t);

(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(4) Not be synopsisized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207(b)(1)).

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

Sec.

- 15.000 Scope of part.
 - 15.001 Definitions.
 - 15.002 Types of negotiated acquisition.
 - 15.003 Negotiation authority.
 - 15.004 Mandatory justification requirement.
- Subpart 15.1—Source Selection Processes and Techniques**
- 15.100 Scope of subpart.
 - 15.101 Best value continuum.
 - 15.101-1 Tradeoff process.
 - 15.101-2 Lowest price technically acceptable source selection process.
 - 15.102 Oral presentations.
- Subpart 15.2—Solicitation and Receipt of Proposals and Information**
- 15.200 Scope of subpart.
 - 15.201 Exchanges with industry before receipt of proposals.
 - 15.202 Advisory multi-step process.
 - 15.203 Requests for proposals.
 - 15.204 Contract format.
 - 15.204-1 Uniform contract format.
 - 15.204-2 Part I—The Schedule.
 - 15.204-3 Part II—Contract Clauses.
 - 15.204-4 Part III—List of Documents, Exhibits, and Other Attachments.
 - 15.204-5 Part IV—Representations and Instructions.
 - 15.205 Issuing solicitations.
 - 15.206 Amending the solicitation.
 - 15.207 Handling proposals and information.
 - 15.208 Submission, modification, revision, and withdrawal of proposals.
 - 15.209 Solicitation provisions and contract clauses.
 - 15.210 Forms.
- Subpart 15.3—Source Selection**
- 15.300 Scope of subpart.
 - 15.301 [Reserved]
 - 15.302 Source selection objective.
 - 15.303 Responsibilities.
 - 15.304 Evaluation factors and significant subfactors.
 - 15.305 Proposal evaluation.
 - 15.306 Exchanges with offerors after receipt of proposals.
 - 15.307 Proposal revisions.
 - 15.308 Source selection decision.
- Subpart 15.4—Contract Pricing**
- 15.400 Scope of subpart.
 - 15.401 Definitions.
 - 15.402 Pricing policy.
 - 15.403 Obtaining cost or pricing data.
 - 15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
 - 15.403-2 Other circumstances where cost or pricing data are not required.
 - 15.403-3 Requiring information other than cost or pricing data.
 - 15.403-4 Requiring cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).
 - 15.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.
 - 15.404 Proposal analysis.
 - 15.404-1 Proposal analysis techniques.
 - 15.404-2 Information to support proposal analysis.
 - 15.404-3 Subcontract pricing considerations.
 - 15.404-4 Profit.
 - 15.405 Price negotiation.
 - 15.406 Documentation.
 - 15.406-1 Prenegotiation objectives.
 - 15.406-2 Certificate of Current Cost or Pricing Data.
 - 15.406-3 Documenting the negotiation.
 - 15.407 Special cost or pricing areas.
 - 15.407-1 Defective cost or pricing data.
 - 15.407-2 Make-or-buy programs.
 - 15.407-3 Forward pricing rate agreements.
 - 15.407-4 Should-cost review.
 - 15.407-5 Estimating systems.
 - 15.408 Solicitation provisions and contract clauses.
- Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes**
- 15.501 Definition.
 - 15.502 Applicability.
 - 15.503 Notifications to unsuccessful offerors.
 - 15.504 Award to successful offeror.
 - 15.505 Preaward debriefing of offerors.
 - 15.506 Postaward debriefing of offerors.
 - 15.507 Protests against award.
 - 15.508 Discovery of mistakes.
 - 15.509 Forms.
- Subpart 15.6—Unsolicited Proposals**
- 15.600 Scope of subpart.
 - 15.601 Definitions.
 - 15.602 Policy.
 - 15.603 General.
 - 15.604 Agency points of contact.
 - 15.605 Content of unsolicited proposals.
 - 15.606 Procedures.
 - 15.606-1 Receipt and initial review.
 - 15.606-2 Evaluation.
 - 15.607 Criteria for acceptance and negotiation of an unsolicited proposal.
 - 15.608 Prohibitions.

15.609 Limited use of data.

15.000 Scope of part.

This part prescribes policies and procedures governing competitive and noncompetitive negotiated acquisitions. A contract awarded using other than sealed bidding procedures is a negotiated contract (see 14.101).

15.001 Definitions.

As used in this part—

“Deficiency” is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.

“Proposal modification” is a change made to a proposal before the solicitation closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a contracting officer, as the result of negotiations.

“Weakness” means a flaw in the proposal that increases the risk of unsuccessful contract performance. A “significant weakness” in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance.

15.002 Types of negotiated acquisition.

(a) *Sole source acquisitions.* When contracting in a sole source environment, the request for proposals (RFP) should be tailored to remove unnecessary information and requirements; *e.g.*, evaluation criteria and voluminous proposal preparation instructions.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, the evaluation, and the source selection decision, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors’ proposals, leading to selection of the proposal representing the best value to the Government (see 2.101).

15.003 Negotiation authority.

Pursuant to the authority of 44 U.S.C. 311, the Public Printer may negotiate purchases and contracts for supplies or services for which the Public Printer determines that it is impracticable to secure competition by advertising.

15.004 Mandatory justification requirement.

The Public printer may not award a contract under this section unless the justification (D&F) for this use of negotiation is in writing and a certification is made as to the accuracy and completeness of this justification. The justification shall set out the facts and circumstances that clearly and convincingly establish that advertising would not be practicable for such contract. This justification is final and a copy thereof shall be maintained in GPO for at least 6 years after the date of the

determination. The Public Printer has designated the Director, MMS to sign the D&F and certify as to the accuracy and completeness of the justification.

Subpart 15.1—Source Selection Processes and Techniques**15.100 Scope of subpart.**

This subpart describes some of the acquisition processes and techniques that may be used to design competitive acquisition strategies suitable for the specific circumstances of the acquisition.

15.101 Best value continuum.

The GPO can obtain best value in negotiated acquisitions by using any one or a combination of source selection approaches. In different types of acquisitions, the relative importance of cost or price may vary. For example, in acquisitions where the requirement is clearly definable and the risk of unsuccessful contract performance is minimal, cost or price may play a dominant role in source selection. The less definitive the requirement, the more development work required, or the greater the performance risk, the more technical or past performance considerations may play a dominant role in source selection.

15.101-1 Tradeoff process.

(a) A tradeoff process is appropriate when it may be in the best interest of the Government to consider award to other than the lowest priced offeror or other than the highest technically rated offeror.

(b) When using a tradeoff process, the following apply:

(1) All evaluation factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation; and

(2) The solicitation shall state whether all evaluation factors other than cost or price, when combined, are significantly more important than, approximately equal to, or significantly less important than cost or price.

(c) This process permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest priced proposal. The perceived benefits of the higher priced proposal shall merit the additional cost, and the rationale for tradeoffs must be documented in the file in accordance with 15.406.

15.101-2 Lowest price technically acceptable source selection process.

(a) The lowest price technically acceptable source selection process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price.

(b) When using the lowest price technically acceptable process, the following apply:

(1) The evaluation factors and significant subfactors that establish the requirements of acceptability shall be set forth in the solicitation. Solicitations shall specify that award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. If the contracting officer documents the file pursuant to 15.304(c)(3)(iv), past performance need not be an evaluation factor in lowest price technically acceptable source selections. If the contracting officer elects to consider past performance as an evaluation factor, it shall be evaluated in accordance with 15.305. However, the comparative assessment in 15.305(a)(2)(i) does not apply.

(2) Tradeoffs are not permitted.

(3) Proposals are evaluated for acceptability but not ranked using the non-cost/price factors.

(4) Exchanges may occur (see 15.306).

15.102 Oral presentations.

(a) Oral presentations by offerors as requested by the Government may substitute for, or augment, written information. Use of oral presentations as a substitute for portions of a proposal can be effective in streamlining the source selection process. Oral presentations may occur at any time in the acquisition process, and are subject to the same restrictions as written information, regarding timing (see 15.208) and content (see 15.306). Oral presentations provide an opportunity for dialogue among the parties. Pre-recorded videotaped presentations that lack real-time interactive dialogue are not considered oral presentations for the purposes of this section, although they may be included in offeror submissions, when appropriate.

(b) The solicitation may require each offeror to submit part of its proposal through oral presentations. However, certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) shall be submitted in writing.

(c) Information pertaining to areas such as an offeror's capability, past performance, work plans or approaches, staffing resources, transition plans, or sample tasks (or other types of tests) may be suitable for oral presentations. In deciding what information to obtain through an oral presentation, consider the following:

(1) The Government's ability to adequately evaluate the information;

(2) The need to incorporate any information into the resultant contract;

(3) The impact on the efficiency of the acquisition; and

(4) The impact (including cost) on small businesses. In considering the costs of oral presentations, contracting officers should also consider alternatives to on-site oral presentations (*e.g.*, teleconferencing, video teleconferencing).

(d) When oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The types of information to be presented orally and the associated evaluation factors that will be used;

(2) The qualifications for personnel that will be required to provide the oral presentation(s);

(3) The requirements for, and any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The location, date, and time for the oral presentations;

(5) The restrictions governing the time permitted for each oral presentation; and

(6) The scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see 15.306(d)) will be permitted during oral presentations.

(e) The contracting officer shall maintain a record of oral presentations to document what the Government relied upon in making the source selection decision. The method and level of detail of the record (*e.g.*, videotaping, audio tape recording, written record, Government notes, copies of offeror briefing slides or presentation notes) shall be at the discretion of the source selection authority. A copy of the record placed in the file may be provided to the offeror.

(f) When an oral presentation includes information that the parties intend to include in the contract as material terms or conditions, the information shall be put in writing. Incorporation by reference of oral statements is not permitted.

(g) If, during an oral presentation, the Government conducts discussions (see 15.306(d)), the Government must comply with 15.306 and 15.307.

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

- (a) Exchanging information with industry prior to receipt of proposals;
- (b) Preparing and issuing requests for proposals (RFPs) and requests for information (RFIs); and
- (c) Receiving proposals and information.

15.201 Exchanges with industry before receipt of proposals.

(a) Exchanges of information among all interested parties, from the earliest identification of a requirement through receipt of proposals, are encouraged. Any exchange of information must be consistent with procurement integrity requirements (see 3.104). Interested parties include potential offerors, end users, Government acquisition and supporting personnel, and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements, and enhancing the Government's ability to obtain quality supplies and services, including construction, at reasonable prices, and increase efficiency in proposal preparation, proposal evaluation, negotiation, and contract award.

(c) MMS should promote early exchanges of information about future acquisitions. An early exchange of information among industry and the program manager, contracting officer, and other participants in the acquisition process can identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; the availability of reference documents; and any other industry concerns or questions. Some techniques to promote early exchanges of information are—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research, as described in Part 10;
- (4) One-on-one meetings with potential offerors (any that are substantially involved with potential contract terms and conditions should include the contracting officer; also see paragraph (f) of this section regarding restrictions on disclosure of information);
- (5) Presolicitation notices;
- (6) Draft RFPs;

- (7) RFIs;
- (8) Presolicitation or preproposal conferences; and
- (9) Site visits.

(d) The special notices of procurement matters at 5.205(c), or electronic notices, may be used to publicize the Government's requirement or solicit information from industry.

(e) RFIs may be used when the Government does not presently intend to award a contract, but wants to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract. There is no required format for RFIs.

(f) General information about agency mission needs and future requirements may be disclosed at any time. After release of the solicitation, the contracting officer must be the focal point of any exchange with potential offerors. When specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information must be made available to the public as soon as practicable, but no later than the next general release of information, in order to avoid creating an unfair competitive advantage. Information provided to a potential offeror in response to its request must not be disclosed if doing so would reveal the potential offeror's confidential business strategy, and is protected under 3.104 or Subpart 24.2. When conducting a presolicitation or preproposal conference, materials distributed at the conference should be made available to all potential offerors, upon request.

15.202 Advisory multi-step process.

(a) MMS may publish a presolicitation notice (see 5.204) that provides a general description of the scope or purpose of the acquisition and invites potential offerors to submit information that allows the Government to advise the offerors about their potential to be viable competitors. The presolicitation notice should identify the information that must be submitted and the criteria that will be used in making the initial evaluation. Information sought may be limited to a statement of qualifications and other appropriate information (*e.g.*, proposed technical concept, past performance, and limited pricing information). At a minimum, the notice shall contain sufficient information to permit a potential offeror to make an informed decision about whether to participate in the acquisition. This process should not be used for multi-step acquisitions where it would result in offerors being required to submit identical information in response to the notice and in response to the initial step of the acquisition.

(b) MMS shall evaluate all responses in accordance with the criteria stated in the notice, and shall advise each respondent in writing either that it will be invited to participate in the resultant acquisition or, based on the information submitted, that it is unlikely to be a viable competitor. MMS shall advise

respondents considered not to be viable competitors of the general basis for that opinion. MMS shall inform all respondents that, notwithstanding the advice provided by the Government in response to their submissions, they may participate in the resultant acquisition.

15.203 Requests for proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs for competitive acquisitions shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract:

(i) The solicitation may authorize offerors to propose alternative terms and conditions, including the contract line item number (CLIN) structure; and

(ii) When alternative CLIN structures are permitted, the evaluation approach should consider the potential impact on other terms and conditions or the requirement (*e.g.*, place of performance or payment and funding requirements) (see 15.206);

(3) Information required to be in the offeror's proposal; and

(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.

(b) Electronic commerce may be used to issue RFPs and to receive proposals, modifications, and revisions. In this case, the RFP shall specify the electronic commerce method(s) that offerors may use (see Subpart 4.5).

(c) Contracting officers may issue RFPs and/or authorize receipt of proposals, modifications, or revisions by facsimile.

(1) In deciding whether or not to use facsimiles, the contracting officer should consider factors such as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(d) Letter RFPs may be used in sole source acquisitions and other appropriate circumstances. Use of a letter RFP does not relieve the contracting officer from complying with other MMAR requirements. Letter RFPs should be as complete as possible and, at a minimum, should contain the following:

(1) RFP number and date;

(2) Name, address (including electronic address and facsimile address, if appropriate), and telephone number of the contracting officer;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Anticipated contract terms and conditions;

(7) Instructions to offerors and evaluation criteria for other than sole source actions;

(8) Proposal due date and time; and

(9) Other relevant information; *e.g.*, incentives, variations in delivery schedule, cost proposal support, and data requirements.

(e) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government and a notice is not required under 5.202 (*e.g.*, perishable items and support of contingency operations or other emergency situations). Use of an oral RFP does not relieve the contracting officer from complying with other MMAR requirements.

(1) The contract files supporting oral solicitations should include—

(i) A description of the requirement;

(ii) Rationale for use of an oral solicitation;

(iii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iv) The solicitation number provided to the prospective offerors.

(2) The information furnished to potential offerors under oral solicitations should include appropriate items from paragraph (e) of this section.

15.204 Contract format.

The use of a uniform contract format facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The uniform contract format need not be used for the following:

(a) Construction and architect-engineer contracts (see Part 36).

(b) Subsistence contracts.

(c) Supplies or services contracts requiring special contract formats prescribed elsewhere in this regulation that are inconsistent with the uniform format.

(d) Letter requests for proposals (see 15.203(e)).

(e) Contracts exempted by the agency head or designee.

15.204-1 Uniform contract format.

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in Table 15-1 of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see 15.204-2 through 15.204-5). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. Section K shall be incorporated by reference in the contract.

TABLE 15-1—UNIFORM CONTRACT FORMAT

SECTION	TITLE
<u>Part I—The Schedule</u>	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/statement of work
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
<u>Part II—Contract Clauses</u>	
I	Contract clauses
<u>Part III—List of Documents, Exhibits, and Other Attachments</u>	
J	List of attachments
<u>Part IV—Representations and Instructions</u>	
K	Representations, certifications, and other statements of offerors or respondents
L	Instructions, conditions, and notices to offerors or respondents
M	Evaluation factors for award

- (v) Number of pages.
- (vi) Requisition or other purchase authority.
- (vii) Brief description of item or service.
- (viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and zip code, and electronic address (including facsimile address), if appropriate.
- (ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see Part 11, Describing Agency Needs).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see Part 46, Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see Subpart 11.4, Delivery or Performance Schedules, and 47.301-1).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

15.204-2 Part I—The Schedule.

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) Optional Form (OF) 308, Solicitation and Offer—Negotiated Acquisition, or Standard Form (SF) 33, Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than OF 308 or SF 33 is used, include the following information on the first page of the solicitation:

- (i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.
- (ii) Solicitation number.
- (iii) Date of issuance.
- (iv) Closing date and time.

15.204-3 Part II—Contract Clauses.

Section I, Contract clauses. The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section’s format is particularly complex.

15.204-4 Part III—List of Documents, Exhibits, and Other Attachments.

Section J, List of attachments. The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

15.204-5 Part IV—Representations and Instructions.

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

- (1) Administrative;
- (2) Management;
- (3) Technical;
- (4) Past performance; and
- (5) Cost or pricing data (see Table 15-2 of 15.408) or information other than cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see 15.304(d)). The contracting officer shall insert one of the phrases in 15.304(e).

15.205 Issuing solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in 5.102, 19.202-4, and Part 6.

(b) A master solicitation, as described in 14.203-3, may also be used for negotiated acquisitions.

15.206 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see 15.207(b) and 15.306(e)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for

issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see Subpart 4.5, Electronic Commerce in Contracting).

(g) At a minimum, the following information should be included in each amendment:

- (1) Name and address of issuing activity.
- (2) Solicitation number and date.
- (3) Amendment number and date.
- (4) Number of pages.
- (5) Description of the change being made.
- (6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).
- (7) Revision to solicitation closing date, if applicable.

15.207 Handling proposals and information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See 3.104 regarding the disclosure of source selection information (41 U.S.C. 423)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under 15.208(a), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation

tation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government’s control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, 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.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see 4.803(a)(10)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror’s request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror’s request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in 15.503(b) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification, until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215-1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a new paragraph (c)(9) substantially the same as Alternate II.

(b)(1) The contracting officer shall insert the clause at 52.215-2, Audit and Records-Negotiation (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A-133), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under 15.403-1.

(2) For facilities acquisitions, the contracting officer shall use the clause with its Alternate I.

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the head of the agency has waived the examination of records by the Comptroller General in accordance with 25.1001, use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215-3, Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) [Reserved]

(e) The contracting officer shall insert the provision at 52.215-5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215-6, Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215-7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are used (see 14.213).

(h) The contracting officer shall insert the clause at 52.215-8, Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at 15.204.

15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) Standard Form 33, Solicitation, Offer and Award, and Optional Form 308, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) Standard Form 30, Amendment of Solicitation/ Modification of Contract, and Optional Form 309, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Optional Form 17, Offer Label, may be furnished with each request for proposal.

Subpart 15.3—Source Selection

15.300 Scope of subpart.

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

15.301 [Reserved]

15.302 Source selection objective.

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

15.303 Responsibilities.

(a) The Public Printer is responsible for source selection. The contracting officer is designated as the source selection authority, unless the Public Printer appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

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

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

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

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation;

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

(6) Select the source or sources whose proposal is the best value to the Government.

(c) The contracting officer shall—

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

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

(3) Award the contract(s).

15.304 Evaluation factors and significant subfactors.

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

(b) Evaluation factors and significant subfactors must—

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

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

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are

within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (also see Part 36 for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience; and

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

(ii) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$100,000.

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

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

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

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price.

15.305 Proposal evaluation.

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

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403-1(c)(1)(i)(B)) may be appropriate to

establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See 37.115 for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.

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

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

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

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

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

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

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

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

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

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

15.306 Exchanges with offerors after receipt of proposals.

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

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

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at 52.215-1).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (e.g., perceived deficiencies, weaknesses, errors, omissions, or mistakes (see 14.407)); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with 15.305(a), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with 15.305(a) and paragraph (c)(1) of this section, the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see 52.215-1(f)(4)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with 15.503.

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see 15.505 and 15.506).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and must be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see 15.307(a) and 15.503(a)(1)).

(e) *Limits on exchanges.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable;

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of 3.104.

shall be in writing and that the Government intends to make award without obtaining further revisions.

15.307 Proposal revisions.

(a) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions

15.308 Source selection decision.

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

Subpart 15.4—Contract Pricing

15.400 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

15.401 Definitions.

As used in this subpart—

“Price” means cost plus any fee or profit applicable to the contract type.

“Subcontract” (except as used in 15.407-2) also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor.

15.402 Pricing policy.

Contracting officers must—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required by 15.403-4, the contracting officer must generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by 15.403-3(b).

(2) Information other than cost or pricing data:

(i) Information related to prices (*e.g.*, established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under 15.403-1(b)(1) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at 2.101.

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers must not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

15.403 Obtaining cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data.

(a) Cost or pricing data need not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) Standards for exceptions from cost or pricing data requirements— (1) *Adequate price competition.* A price is based on adequate price competition if—(i) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government's expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value (see 2.101) where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.*, circumstances indicate that—

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition, is reasonable, and is approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* Any acquisition for an item that meets the commercial item definition in 2.101, or any modification, as defined in paragraph (3)(i) or (ii) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for cost or pricing data. If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, the contracting officer must require submission of cost or pricing data.

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of cost or pricing data unless—

(i) An exception otherwise applies to the subcontract; or

(ii) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

15.403-2 Other circumstances where cost or pricing data are not required.

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of cost or pricing data.

(b) Cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

15.403-3 Requiring information other than cost or pricing data.

(a) *General.* (1) The contracting officer is responsible for obtaining information that is adequate for evaluating the reasonableness of the price or determining cost realism, but the contracting officer should not obtain more information than is necessary (see 15.402(a)). If the contracting officer cannot obtain adequate information from sources other than the offeror, the contracting officer must require submission of information other than cost or pricing data from the offeror that is adequate to determine a fair and reasonable price. Unless an exception under 15.403-1(b)(1) or (2) applies, the contracting officer must require that the information submitted by the offeror include, at a minimum, appropriate information on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price. To determine the information an offeror should be required to submit, the contracting officer should consider the guidance in Section 3.3, Chapter 3, Volume I, of the Contract Pricing Reference Guide cited at 15.404-1(a)(7).

(2) The contractor's format for submitting the information should be used (see 15.403-5(b)(2)).

(3) The contracting officer must ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price. Requests for updated offeror information should be limited to information that affects the adequacy of the proposal for negotiations, such as changes in price lists.

(4) An offeror who does not comply with a requirement to submit information for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(b) *Adequate price competition.* When adequate price competition exists (see 15.403-1(c)(1)), generally no additional information is necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional information is necessary to determine the reasonableness of price, the contracting

officer shall, to the maximum extent practicable, obtain the additional information from sources other than the offeror. In addition, the contracting officer may request information to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see 15.404-1(b)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional information from sources other than the offeror, then the contracting officer must require the offeror to submit information other than cost or pricing data to support further analysis (see 15.404-1).

(2) *Limitations relating to commercial items.* (i) The contracting officer must limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer must, to the maximum extent practicable, limit the scope of the request for information relating to commercial items to include only information that is in the form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government must not disclose outside the Government information obtained relating to commercial items that is exempt from disclosure under 24.202(a).

15.403-4 Requiring cost or pricing data.

(a)(1) The contracting officer must obtain cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has sufficient information available to determine price reasonableness, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining cost or pricing data is \$550,000. Unless an exception applies, cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, for existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to submit cost or pricing data (but see waivers at 15.403-1(c)(4)).

(iii) The modification of any sealed bid or negotiated contract (whether or not cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.*, a \$200,000 modification resulting from a reduction of \$400,000 and an increase of

\$200,000 is a pricing adjustment exceeding \$550,000). This requirement does not apply when unrelated and separately priced changes for which cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

(2) Unless prohibited because an exception at 15.403-1(b) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for cost or pricing data. The documentation shall include a written finding that cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The cost or pricing data.

(2) A certificate of current cost or pricing data, in the format specified in 15.406-2, certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered cost or pricing data as defined in 2.101 and must not be certified in accordance with 15.406-2.

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

15.403-5 Instructions for submission of cost or pricing data or information other than cost or pricing data.

(a) Taking into consideration the policy at 15.402, the contracting officer shall specify in the solicitation (see 15.408(l) and (m))—

- (1) Whether cost or pricing data are required;
 - (2) That, in lieu of submitting cost or pricing data, the offeror may submit a request for exception from the requirement to submit cost or pricing data;
 - (3) Any information other than cost or pricing data that is required; and
 - (4) Necessary preaward or postaward access to offeror's records.
- (b)(1) Unless required to be submitted on one of the termination forms specified in Subpart 49.6, the contracting officer may require submission of cost or pricing data in the format indicated in Table 15-2 of 15.408, specify an alternative format, or permit submission in the contractor's format.
- (2) Information other than cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential and the format has been described in the solicitation.
 - (3) Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

15.404 Proposal analysis.

15.404-1 Proposal analysis techniques.

- (a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.
- (1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.
 - (2) Price analysis shall be used when cost or pricing data are not required (see paragraph (b) of this subsection and 15.404-3).
 - (3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.
 - (4) Cost analysis may also be used to evaluate information other than cost or pricing data to determine cost reasonableness or cost realism.
 - (5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.
 - (6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omis-

sions, and errors in computation) contained in the cost or pricing data or information other than cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via the internet at <http://www.acq.osd.mil/dp/cpf>.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

- (i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes price reasonableness (see 15.403-1(c)(1)).
- (ii) Comparison of previously proposed prices and previous Government and commercial contract prices with current proposed prices for the same or similar items, if both the validity of the comparison and the reasonableness of the previous price(s) can be established.
- (iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.
- (iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.
- (v) Comparison of proposed prices with independent Government cost estimates.
- (vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.
- (vii) Analysis of pricing information provided by the offeror.

(3) The first two techniques at 15.404-1(b)(2) are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror's cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror's current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government's request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror's cost submissions are in accordance with the contract cost principles and procedures in Part 31.

(v) Review to determine whether any cost or pricing data necessary to make the contractor's proposal accurate, complete, and current have not been either submitted or identified in writing by the contractor. If there are such data, the

contracting officer shall attempt to obtain them and negotiate, using them or making satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see 15.407-2).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror's proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror's technical proposal.

(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government's best estimate of the cost of any contract that is most likely to result from the offeror's proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror's proposed cost, and fee when appropriate, to reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer may request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, facilities, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(f) *Unit prices.* (1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected. Such information shall be used to determine whether the intrinsic value of an item has been distorted through application of overhead and whether such items should be considered for breakout. The contracting officer may require such information in all other negotiated contracts when appropriate.

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or sub-line items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

15.404-2 Information to support proposal analysis.

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The contracting officer must tailor requests to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) The contracting officer must tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

(i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;

(ii) Information on related pricing practices and history;

(iii) Information to help contracting officers determine commerciality and price reasonableness, including—

(A) Verifying sales history to source documents;

(B) Identifying special terms and conditions;

(C) Identifying customarily granted or offered discounts for the item;

(D) Verifying the item to an existing catalog or price list;

(E) Verifying historical data for an item previously not determined commercial that the offeror is now trying to qualify as a commercial item; and

(F) Identifying general market conditions affecting determinations of commerciality and price reasonableness.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

(3) When field pricing assistance is requested, contracting officers are encouraged to team with appropriate field experts throughout the acquisition process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in 43.204(b)(5).

(5) Field pricing information and other reports may include proprietary or source selection information (see 2.101). This information must be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see 4.807(f)).

(c) *Audit assistance for prime contracts or subcontracts.*

(1) The contracting officer may contact the cognizant audit office directly, particularly when an audit is the only field pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report shall be issued.

(2) The contracting officer shall not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs.

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications shall be confirmed promptly in

writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

15.404-3 Subcontract pricing considerations.

(a) The contracting officer is responsible for the determination of price reasonableness for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (c) of this subsection, submit subcontractor cost or pricing data to the Government as part of its own cost or pricing data.

(c) Any contractor or subcontractor that is required to submit cost or pricing data also shall obtain and analyze cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the cost or pricing data threshold, unless an exception in 15.403-1(b) applies to that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), cost or pricing data to the Government for subcontracts that are the lower of either—

(i) \$10,000,000 or more; or

(ii) Both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer may require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor cost or pricing data below the thresholds in paragraph (c)(1) of this subsection that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor cost or pricing data shall be submitted in the format provided in Table 15-2 of 15.408 or the alternate format specified in the solicitation.

(4) Subcontractor cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government cost or pricing data for the prospective subcontractor most likely to receive the award.

15.404-4 Profit.

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they represent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and the contract type.

(2) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in 1.301(c), agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see Subpart 31.2), facilities capital cost of money will not be an allowable cost in any resulting contract (see 15.408(i)).

(4)(i) The contracting officer shall not negotiate a price or fee that exceeds the following limitations:

(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*—(1) *Common factors*. Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort*. This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific situations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition*. This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor*. This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs*. This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management*. This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk*. (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example, the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs*. This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, handicapped sheltered workshops, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments*. This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments*. This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improve-

ments, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

15.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer

shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

15.406 Documentation.

15.406-1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the contracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

15.406-2 Certificate of Current Cost or Pricing Data.

(a) When cost or pricing data are required, the contracting officer must require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Materials Management Acquisition Regulation (MMAR) and required under MMAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of _____* are accurate, complete, and current as of _____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

**Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

*** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(END OF CERTIFICATE)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (*e.g.*, actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered cost or pricing data and shall not be certified in accordance with this subsection.

15.406-3 Documenting the negotiation.

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (*e.g.*, price negotiation memorandum (PNM)) shall include the following:

- (1) The purpose of the negotiation.
- (2) A description of the acquisition, including appropriate identifying numbers (*e.g.*, RFP No.).

(3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.

(4) The current status of any contractor systems (*e.g.*, purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.

(5) If cost or pricing data were not required in the case of any price negotiation exceeding the cost or pricing data threshold, the exception used and the basis for it.

(6) If cost or pricing data were required, the extent to which the contracting officer—

(i) Relied on the cost or pricing data submitted and used them in negotiating the price;

(ii) Recognized as inaccurate, incomplete, or non-current any cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or

(iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be cost or pricing data.

(7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's negotiation objective, and the negotiated position. Where the determination of price reasonableness is based on cost analysis, the summary shall address each major cost element. When determination of price reasonableness is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

15.407 Special cost or pricing areas.

15.407-1 Defective cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any cost or pricing data submitted are inaccurate,

incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in 15.408(b) and (c) and is set forth in the clauses at 52.215-10, Price Reduction for Defective Cost or Pricing Data, and 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications. The clauses give the Government the right to a price adjustment for defects in cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(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 such contract; or

(iv) Cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (6) of this subsection, the contracting officer shall allow an offset for any understated cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (e.g., the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) 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

(ii) Proves that the cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (e.g., material, direct labor, or indirect costs).

(6) An offset shall not be allowed if—

(i) The understated data were known by the contractor to be understated before the "as of" date specified on the Certificate of Current Cost or Pricing Data; or

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

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in 32.001.

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the demand letter, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date; and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at 52.215-10, Price Reduction for Defective Cost or Pricing Data, and 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the

contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

(2) Under cost-reimbursement contracts and under all fixed-price contracts except firm-fixed-price contracts and fixed-price contracts with economic price adjustment, payments to subcontractors that are higher than they would be had there been no defective subcontractor cost or pricing data shall be the basis for disallowance or nonrecognition of costs under the clauses prescribed in 15.408(b) and (c). The Government has a continuing and direct financial interest in such payments that is unaffected by the initial agreement on prime contract price.

15.407-2 Make-or-buy programs.

(a) *General.* The prime contractor is responsible for managing contract performance, including planning, placing, and administering subcontracts as necessary to ensure the lowest overall cost and technical risk to the Government. When make-or-buy programs are required, the Government may reserve the right to review and agree on the contractor's make-or-buy program when necessary to ensure negotiation of reasonable contract prices, satisfactory performance, or implementation of socioeconomic policies. Consent to subcontracts and review of contractors' purchasing systems are separate actions covered in Part 44.

(b) *Definition.* "Make item," as used in this subsection, means an item or work effort to be produced or performed by the prime contractor or its affiliates, subsidiaries, or divisions.

(c) *Acquisitions requiring make-or-buy programs.*

(1) Contracting officers may require prospective contractors to submit make-or-buy program plans for negotiated acquisitions requiring cost or pricing data whose estimated value is \$10 million or more, except when the proposed contract is for research or development and, if prototypes or hardware are involved, no significant follow-on production is anticipated.

(2) Contracting officers may require prospective contractors to submit make-or-buy programs for negotiated acquisitions whose estimated value is under \$10 million only if the contracting officer—

- (i) Determines that the information is necessary; and
- (ii) Documents the reasons in the contract file.

(d) *Solicitation requirements.* When prospective contractors are required to submit proposed make-or-buy programs, the solicitation shall include—

(1) A statement that the program and required supporting information must accompany the offer; and

(2) A description of factors to be used in evaluating the proposed program, such as capability, capacity, availability of small, small disadvantaged, and women-owned small business concerns for subcontracting, establishment of new facilities in or near labor surplus areas, delivery or performance schedules, control of technical and schedule interfaces, proprietary processes, technical superiority or exclusiveness, and technical risks involved.

(e) *Program requirements.* To support a make-or-buy program, the following information shall be supplied by the contractor in its proposal:

(1) *Items and work included.* The information required from a contractor in a make-or-buy program shall be confined to those major items or work efforts that normally would require company management review of the make-or-buy decision because they are complex, costly, needed in large quantities, or require additional facilities to produce. Raw materials, commercial items (see 2.101), and off-the-shelf items (see 46.101) shall not be included, unless their potential impact on contract cost or schedule is critical. Normally, make-or-buy programs should not include items or work efforts estimated to cost less than 1 percent of the total estimated contract price or any minimum dollar amount set by the agency.

(2) The offeror's program should include or be supported by the following information:

(i) A description of each major item or work effort.

(ii) Categorization of each major item or work effort as “must make,” “must buy,” or “can either make or buy.”

(iii) For each item or work effort categorized as “can either make or buy,” a proposal either to “make” or to “buy.”

(iv) Reasons for categorizing items and work efforts as “must make” or “must buy,” and proposing to “make” or to “buy” those categorized as “can either make or buy.” The reasons must include the consideration given to the evaluation factors described in the solicitation and must be in sufficient detail to permit the contracting officer to evaluate the categorization or proposal.

(v) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area.

(vi) Identification of proposed subcontractors, if known, and their location and size status (also see Subpart 19.7 for subcontracting plan requirements).

(vii) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission.

(viii) Any other information the contracting officer requires in order to evaluate the program.

(f) *Evaluation, negotiation, and agreement.* Contracting officers shall evaluate and negotiate proposed make-or-buy programs as soon as practicable after their receipt and before contract award.

(1) When the program is to be incorporated in the contract and the design status of the product being acquired does not permit accurate precontract identification of major items or work efforts, the contracting officer shall notify the prospective contractor in writing that these items or efforts, when identifiable, shall be added under the clause at 52.215-9, Changes or Additions to Make-or-Buy Program.

(2) Contracting officers normally shall not agree to proposed “make items” when the products or services are not regularly manufactured or provided by the contractor and are available—quality, quantity, delivery, and other essential factors considered—from another firm at equal or lower prices, or when they are regularly manufactured or provided by the contractor, but are available—quality, quantity, delivery, and other essential factors considered—from another firm at lower prices. However, the contracting officer may agree to these as “make items” if an overall lower Governmentwide cost would result or it is otherwise in the best interest of the Government. If this situation occurs in any fixed-price incentive or cost-plus-incentive-fee contract, the contracting officer shall specify these items in the contract and state that they are subject to paragraph (d) of the clause at 52.215-9, Changes or Additions to Make-or-Buy Program (see 15.408(a)). If the contractor proposes to reverse the categorization of such items during contract performance, the contract price shall be subject to equitable reduction.

(g) *Incorporating make-or-buy programs in contracts.* The contracting officer may incorporate the make-or-buy program in negotiated contracts for—

(1) Major systems (see Part 34) or their subsystems or components, regardless of contract type; or

(2) Other supplies and services if—

(i) The contract is a cost-reimbursable contract, or a cost-sharing contract in which the contractor's share of the cost is less than 25 percent; and

(ii) The contracting officer determines that technical or cost risks justify Government review and approval of changes or additions to the make-or-buy program.

15.407-3 Forward pricing rate agreements.

(a) When cost or pricing data are required, offerors are required to describe any forward pricing rate agreements (FPRA's) in each specific pricing proposal to which the rates apply and to identify the latest cost or pricing data already submitted in accordance with the agreement. All data submitted in connection with the agreement, updated as necessary, form a part of the total data that the offeror certifies to be accu-

rate, complete, and current at the time of agreement on price for an initial contract or for a contract modification.

(b) Contracting officers will use FPRA rates as bases for pricing all contracts, modifications, and other contractual actions to be performed during the period covered by the agreement. Conditions that may affect the agreement's validity shall be reported promptly to the ACO. If the ACO determines that a changed condition invalidates the agreement, the ACO shall notify all interested parties of the extent of its effect and status of efforts to establish a revised FPRA.

(c) Contracting officers shall not require certification at the time of agreement for data supplied in support of FPRA's or other advance agreements. When a forward pricing rate agreement or other advance agreement is used to price a contract action that requires a certificate, the certificate supporting that contract action shall cover the data supplied to support the FPRA or other advance agreement, and all other data supporting the action.

15.407-4 Should-cost review.

(a) *General.* (1) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods because they do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(2) There are two types of should-cost reviews—program should-cost review (see paragraph (b) of this subsection) and overhead should-cost review (see paragraph (c) of this subsection). These should-cost reviews may be performed together or independently. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

(b) *Program should-cost review.* (1) A program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually associated with the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(2) A program should-cost review should be considered, particularly in the case of a major system acquisition (see Part 34), when—

- (i) Some initial production has already taken place;
- (ii) The contract will be awarded on a sole source basis;
- (iii) There are future year production requirements for substantial quantities of like items;
- (iv) The items being acquired have a history of increasing costs;
- (v) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;
- (vi) Sufficient time is available to plan and adequately conduct the should-cost review; and
- (vii) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(3) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. The expertise of on-site Government personnel should be used, when appropriate. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and vendor management are normally reviewed in a should-cost review.

(4) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the ACO a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(5) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan or acquisition plan updates (see Subpart 7.1) and in the solicitation.

(c) *Overhead should-cost review.* (1) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and gen-

eral and administrative activities. It is normally used to evaluate and negotiate an FPRA with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(2) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

- (i) Dollar amount of Government business.
- (ii) Level of Government participation.
- (iii) Level of noncompetitive Government contracts.
- (iv) Volume of proposal activity.
- (v) Major system or program.
- (vi) Corporate reorganizations, mergers, acquisitions, or takeovers.
- (vii) Other conditions (*e.g.*, changes in accounting systems, management, or business activity).

(3) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, and identify and recommend corrective actions regarding inefficient and uneconomical practices. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating an FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

15.407-5 Estimating systems.

(a) Using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals. Cognizant audit activities, when it is appropriate to do so, shall establish and manage regular programs for reviewing selected contractors' estimating systems or methods, in order to reduce the scope of reviews to be performed on individual proposals, expedite the negotiation process, and increase the reliability of proposals. The results of estimating system reviews shall be documented in survey reports.

(b) The auditor shall send a copy of the estimating system survey report and a copy of the official notice of corrective action required to each contracting office and contract administration office having substantial business with that contractor. Significant deficiencies not corrected by the contractor shall be a consideration in subsequent proposal analyses and negotiations.

15.408 Solicitation provisions and contract clauses.

(a) *Changes or Additions to Make-or-Buy Program.* The contracting officer shall insert the clause at 52.215-9, Changes or Additions to Make-or-Buy Program, in solicitations and contracts when it is contemplated that a make-or-

buy program will be incorporated in the contract. If a less economical "make" or "buy" categorization is selected for one or more items of significant value, the contracting officer shall use the clause with—

- (1) Its Alternate I, if a fixed-price incentive contract is contemplated; or
- (2) Its Alternate II, if a cost-plus-incentive-fee contract is contemplated.

(b) *Price Reduction for Defective Cost or Pricing Data.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-10, Price Reduction for Defective Cost or Pricing Data, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403-4).

(c) *Price Reduction for Defective Cost or Pricing Data—Modifications.* The contracting officer shall, when contracting by negotiation, insert the clause at 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications, in solicitations and contracts when it is contemplated that cost or pricing data will be required from the contractor or any subcontractor (see 15.403-4) for the pricing of contract modifications, and the clause prescribed in paragraph (b) of this section has not been included.

(d) *Subcontractor Cost or Pricing Data.* The contracting officer shall insert the clause at 52.215-12, Subcontractor Cost or Pricing Data, in solicitations and contracts when the clause prescribed in paragraph (b) of this section is included.

(e) *Subcontractor Cost or Pricing Data—Modifications.* The contracting officer shall insert the clause at 52.215-13, Subcontractor Cost or Pricing Data—Modifications, in solicitations and contracts when the clause prescribed in paragraph (c) of this section is included.

(f) *Integrity of Unit Prices.* (1) The contracting officer shall insert the clause at 52.215-14, Integrity of Unit Prices, in solicitations and contracts except for—

- (i) Acquisitions at or below the simplified acquisition threshold;
- (ii) Construction or architect-engineer services under Part 36;
- (iii) Utility services under Part 41;
- (iv) Service contracts where supplies are not required;
- (v) Acquisitions of commercial items; and
- (vi) Contracts for petroleum products.

(2) The contracting officer shall insert the clause with its Alternate I when contracting without adequate price competition or when prescribed by agency regulations.

(g) *Pension Adjustments and Asset Reversions.* The contracting officer shall insert the clause at 52.215-15, Pension Adjustments and Asset Reversions, in solicitations and contracts for which it is anticipated that cost or pricing data will

be required or for which any preaward or postaward cost determinations will be subject to Part 31.

(h) *Facilities Capital Cost of Money*. The contracting officer shall insert the provision at 52.215-16, Facilities Capital Cost of Money, in solicitations expected to result in contracts that are subject to the cost principles for contracts with commercial organizations (see Subpart 31.2).

(i) *Waiver of Facilities Capital Cost of Money*. If the prospective contractor does not propose facilities capital cost of money in its offer, the contracting officer shall insert the clause at 52.215-17, Waiver of Facilities Capital Cost of Money, in the resulting contract.

(j) *Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions*. The contracting officer shall insert the clause at 52.215-18, Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions, in solicitations and contracts for which it is anticipated that cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to Part 31.

(k) *Notification of Ownership Changes*. The contracting officer shall insert the clause at 52.215-19, Notification of Ownership Changes, in solicitations and contracts for which it is contemplated that cost or pricing data will be required or for which any preaward or postaward cost determination will be subject to Subpart 31.2.

(l) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data*. Considering the hierarchy at 15.402, the contracting officer may insert the provision at 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data, in solicitations if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required. This provision

also provides instructions to offerors on how to request an exception. The contracting officer shall—

(1) Use the provision with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of this section;

(2) Use the provision with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the provision with its Alternate III if submission via electronic media is required; and

(4) Replace the basic provision with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403-3.

(m) *Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications*. Considering the hierarchy at 15.402, the contracting officer may insert the clause at 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications, in solicitations and contracts if it is reasonably certain that cost or pricing data or information other than cost or pricing data will be required for modifications. This clause also provides instructions to contractors on how to request an exception. The contracting officer shall—

(1) Use the clause with its Alternate I to specify a format for cost or pricing data other than the format required by Table 15-2 of this section;

(2) Use the clause with its Alternate II if copies of the proposal are to be sent to the ACO and contract auditor;

(3) Use the clause with its Alternate III if submission via electronic media is required; and

(4) Replace the basic clause with its Alternate IV if cost or pricing data are not expected to be required because an exception may apply, but information other than cost or pricing data is required as described in 15.403-3.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

This document provides instructions for preparing a contract pricing proposal when cost or pricing data are required.

NOTE 1. There is a clear distinction between submitting cost or pricing data and merely making available books, records, and other documents without identification. The requirement for submission of cost or pricing data is met when all accurate cost or pricing data reasonably available to the offeror have been submitted, either actually or by specific identification, to the Contracting Officer or an authorized representative. As later information comes into your possession, it should be submitted promptly to the Contracting Officer in a manner that clearly shows how the information relates to the offeror's price proposal. The requirement for submission of cost or pricing data continues up to the time of agreement on price, or an earlier date agreed upon between the parties if applicable.

NOTE 2. By submitting your proposal, you grant the Contracting Officer or an authorized representative the right to examine records that formed the basis for the pricing proposal. That examination can take place at any time before award. It may include those books, records, documents, and other types of factual information (regardless of form or whether the information is specifically referenced or included in the proposal as the basis for pricing) that will permit an adequate evaluation of the proposed price.

I. General Instructions

A. You must provide the following information on the first page of your pricing proposal:

- (1) Solicitation, contract, and/or modification number;
- (2) Name and address of offeror;
- (3) Name and telephone number of point of contact;
- (4) Name of contract administration office (if available);

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

- (5) Type of contract action (that is, new contract, change order, price revision/redetermination, letter contract, unpressed order, or other);
- (6) Proposed cost; profit or fee; and total;
- (7) Whether you will require the use of Government property in the performance of the contract, and, if so, what property;
- (8) Whether your organization is subject to cost accounting standards; whether your organization has submitted a CASB Disclosure Statement, and if it has been determined adequate; whether you have been notified that you are or may be in noncompliance with your Disclosure Statement or CAS (other than a noncompliance that the cognizant Federal agency official has determined to have an immaterial cost impact), and, if yes, an explanation; whether any aspect of this proposal is inconsistent with your disclosed practices or applicable CAS, and, if so, an explanation; and whether the proposal is consistent with your established estimating and accounting principles and procedures and MMAR Part 31, Cost Principles, and, if not, an explanation;
- (9) The following statement:
 This proposal reflects our estimates and/or actual costs as of this date and conforms with the instructions in MMAR 15.403-5(b)(1) and Table 15-2. By submitting this proposal, we grant the Contracting Officer and authorized representative(s) the right to examine, at any time before award, those records, which include books, documents, accounting procedures and practices, and other data, regardless of type and form or whether such supporting information is specifically referenced or included in the proposal as the basis for pricing, that will permit an adequate evaluation of the proposed price.
- (10) Date of submission; and
- (11) Name, title, and signature of authorized representative.
- B. In submitting your proposal, you must include an index, appropriately referenced, of all the cost or pricing data and information accompanying or identified in the proposal. In addition, you must annotate any future additions and/or revisions, up to the date of agreement on price, or an earlier date agreed upon by the parties, on a supplemental index.
- C. As part of the specific information required, you must submit, with your proposal, cost or pricing data (that is, data that are verifiable and factual and otherwise as defined at MMAR 2.101). You must clearly identify on your cover sheet that cost or pricing data are included as part of the proposal. In addition, you must submit with your proposal any information reasonably required to explain your estimating process, including—
 - (a) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
 - (b) The nature and amount of any contingencies included in the proposed price.
- D. You must show the relationship between contract line item prices and the total contract price. You must attach cost-element breakdowns for each proposed line item, using the appropriate format prescribed in the “Formats for Submission of Line Item Summaries” section of this table. You must furnish supporting breakdowns for each cost element, consistent with your cost accounting system.
- E. When more than one contract line item is proposed, you must also provide summary total amounts covering all line items for each element of cost.
- F. Whenever you have incurred costs for work performed before submission of a proposal, you must identify those costs in your cost/price proposal.
- G. If you have reached an agreement with Government representatives on use of forward pricing rates/factors, identify the agreement, include a copy, and describe its nature.
- H. As soon as practicable after final agreement on price or an earlier date agreed to by the parties, but before the award resulting from the proposal, you must, under the conditions stated in MMAR 15.406-2, submit a Certificate of Current Cost or Pricing Data.

II. Cost Elements

Depending on your system, you must provide breakdowns for the following basic cost elements, as applicable:

- A. *Materials and services.* Provide a consolidated priced summary of individual material quantities included in the various tasks, orders, or contract line items being proposed and the basis for pricing (vendor quotes, invoice prices, etc.). Include raw materials, parts, components, assemblies, and services to be produced or performed by others. For all items proposed, identify the item and show the source, quantity, and price. Conduct price analyses of all subcontractor proposals. Conduct cost analyses for all subcontracts when cost or pricing data are submitted by the subcontractor. Include these analyses as part of your own cost or pricing data submissions for subcontracts expected to exceed the appropriate threshold in MMAR 15.403-4. Submit the subcontractor cost or pricing data as part of your own cost or pricing data as required in paragraph IIA(2) of this table. These requirements also apply to all subcontractors if required to submit cost or pricing data.
 - (1) *Adequate Price Competition.* Provide data showing the degree of competition and the basis for establishing the source and reasonableness of price for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding, or expected to exceed, the appropriate threshold set forth at MMAR 15.403-4 priced on the basis of adequate price competition. For interorganizational transfers priced at other than the cost of comparable competitive commercial work of the division, subsidiary, or affiliate of the contractor, explain the pricing method (see MMAR 31.205-26(e)).

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

- (2) *All Other*. Obtain cost or pricing data from prospective sources for those acquisitions (such as subcontracts, purchase orders, material order, etc.) exceeding the threshold set forth in MMAR 15.403-4 and not otherwise exempt, in accordance with MMAR 15.403-1(b) (i.e., adequate price competition, commercial items, prices set by law or regulation or waiver). Also provide data showing the basis for establishing source and reasonableness of price. In addition, provide a summary of your cost analysis and a copy of cost or pricing data submitted by the prospective source in support of each subcontract, or purchase order that is the lower of either \$10,000,000 or more, or both more than the pertinent cost or pricing data threshold and more than 10 percent of the prime contractor’s proposed price. The Contracting Officer may require you to submit cost or pricing data in support of proposals in lower amounts. Subcontractor cost or pricing data must be accurate, complete and current as of the date of final price agreement, or an earlier date agreed upon by the parties, given on the prime contractor’s Certificate of Current Cost or Pricing Data. The prime contractor is responsible for updating a prospective subcontractor’s data. For standard commercial items fabricated by the offeror that are generally stocked in inventory, provide a separate cost breakdown, if priced based on cost. For interorganizational transfers priced at cost, provide a separate breakdown of cost elements. Analyze the cost or pricing data and submit the results of your analysis of the prospective source’s proposal. When submission of a prospective source’s cost or pricing data is required as described in this paragraph, it must be included along with your own cost or pricing data submission, as part of your own cost or pricing data. You must also submit any other cost or pricing data obtained from a subcontractor, either actually or by specific identification, along with the results of any analysis performed on that data.
- B. *Direct Labor*. Provide a time-phased (e.g., monthly, quarterly, etc.) breakdown of labor hours, rates, and cost by appropriate category, and furnish bases for estimates.
- C. *Indirect Costs*. Indicate how you have computed and applied your indirect costs, including cost breakdowns. Show trends and budgetary data to provide a basis for evaluating the reasonableness of proposed rates. Indicate the rates used and provide an appropriate explanation.
- D. *Other Costs*. List all other costs not otherwise included in the categories described above (e.g., special tooling, travel, computer and consultant services, preservation, packaging and packing, spoilage and rework, and Federal excise tax on finished articles) and provide bases for pricing.
- E. *Royalties*. If royalties exceed \$1,500, you must provide the following information on a separate page for each separate royalty or license fee:
- (1) Name and address of licensor.
 - (2) Date of license agreement.
 - (3) Patent numbers.
 - (4) Patent application serial numbers, or other basis on which the royalty is payable.
 - (5) Brief description (including any part or model numbers of each contract item or component on which the royalty is payable)
 - (6) Percentage or dollar rate of royalty per unit.
 - (7) Unit price of contract item.
 - (8) Number of units.
 - (9) Total dollar amount of royalties.
 - (10) If specifically requested by the Contracting Officer, a copy of the current license agreement and identification of applicable claims of specific patents (see MMAR 27.204 and 31.205-37).
- F. *Facilities Capital Cost of Money*. When you elect to claim facilities capital cost of money as an allowable cost, you must submit Form CASB-CMF and show the calculation of the proposed amount (see MMAR 31.205-10).

III. Formats for Submission of Line Item Summaries

A. *New Contracts (including letter contracts)*.

COST ELEMENTS (1)	PROPOSED CONTRACT ESTIMATE— TOTAL COST (2)	PROPOSED CONTRACT ESTIMATE— UNIT COST (3)	REFERENCE (4)
--------------------------	--	---	----------------------

<u>Column</u>	<u>Instruction</u>
(1)	Enter appropriate cost elements.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

- (2) Enter those necessary and reasonable costs that, in your judgment, will properly be incurred in efficient contract performance. When any of the costs in this column have already been incurred (*e.g.*, under a letter contract), describe them on an attached supporting page. When preproduction or startup costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them.
- (3) Optional, unless required by the Contracting Officer.
- (4) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

B. Change Orders, Modifications, and Claims.

COST ELEMENTS	ESTIMATED COST OF ALL WORK DELETED	COST OF DELETED WORK ALREADY PERFORMED	NET COST TO BE DELETED	COST OF WORK ADDED	NET COST OF CHANGE	REFERENCE
(1)	(2)	(3)	(4)	(5)	(6)	(7)

ColumnInstruction

- (1) Enter appropriate cost elements.
- (2) Include the current estimates of what the cost would have been to complete the deleted work not yet performed (not the original proposal estimates), and the cost of deleted work already performed.
- (3) Include the incurred cost of deleted work already performed, using actuals incurred if possible, or, if actuals are not available, estimates from your accounting records. Attach a detailed inventory of work, materials, parts, components, and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item. Also, if you desire to retain these items or any portion of them, indicate the amount offered for them.
- (4) Enter the net cost to be deleted, which is the estimated cost of all deleted work less the cost of deleted work already performed. Column (2) minus Column (3) equals Column (4).
- (5) Enter your estimate for cost of work added by the change. When nonrecurring costs are significant, or when specifically requested to do so by the Contracting Officer, provide a full identification and explanation of them. When any of the costs in this column have already been incurred, describe them on an attached supporting schedule.
- (6) Enter the net cost of change, which is the cost of work added, less the net cost to be deleted. Column (5) minus Column (4) equals Column (6). When this result is negative, place the amount in parentheses.
- (7) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

C. Price Revision/Redetermination.

CUTOFF DATE	NUMBER OF UNITS COMPLETED	NUMBER OF UNITS TO BE COMPLETED	CONTRACT AMOUNT	REDERMINATION PROPOSAL AMOUNT	DIFFERENCE
(1)	(2)	(3)	(4)	(5)	(6)

COST ELEMENTS	INCURRED COST—PREPRODUCTION	INCURRED COST—COMPLETED UNITS	INCURRED COST—WORK IN PROGRESS	TOTAL INCURRED COST	ESTIMATED COST TO COMPLETE	ESTIMATED TOTAL COST	REFERENCE
(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)

(Use as applicable)

ColumnInstruction

- (1) Enter the cutoff date required by the contract, if applicable.

TABLE 15-2—INSTRUCTIONS FOR SUBMITTING COST/PRICE PROPOSALS WHEN COST OR PRICING DATA ARE REQUIRED

- (2) Enter the number of units completed during the period for which experienced costs of production are being submitted.
- (3) Enter the number of units remaining to be completed under the contract.
- (4) Enter the cumulative contract amount.
- (5) Enter your redetermination proposal amount.
- (6) Enter the difference between the contract amount and the redetermination proposal amount. When this result is negative, place the amount in parentheses. Column (4) minus Column (5) equals Column (6).
- (7) Enter appropriate cost elements. When residual inventory exists, the final costs established under fixed-price-incentive and fixed-price-redeterminable arrangements should be net of the fair market value of such inventory. In support of subcontract costs, submit a listing of all subcontracts subject to repricing action, annotated as to their status.
- (8) Enter all costs incurred under the contract before starting production and other nonrecurring costs (usually referred to as startup costs) from your books and records as of the cutoff date. These include such costs as preproduction engineering, special plant rearrangement, training program, and any identifiable nonrecurring costs such as initial rework, spoilage, pilot runs, etc. In the event the amounts are not segregated in or otherwise available from your records, enter in this column your best estimates. Explain the basis for each estimate and how the costs are charged on your accounting records (*e.g.*, included in production costs as direct engineering labor, charged to manufacturing overhead). Also show how the costs would be allocated to the units at their various stages of contract completion.
- (9) Enter in Column (9) the production costs from your books and records (exclusive of preproduction costs reported in Column (8)) of the units completed as of the cutoff date.
- (10) Enter in Column (10) the costs of work in process as determined from your records or inventories at the cutoff date. When the amounts for work in process are not available in your records but reliable estimates for them can be made, enter the estimated amounts in Column (10) and enter in column (9) the differences between the total incurred costs (exclusive of preproduction costs) as of the cutoff date and these estimates. Explain the basis for the estimates, including identification of any provision for experienced or anticipated allowances, such as shrinkage, rework, design changes, etc. Furnish experienced unit or lot costs (or labor hours) from inception of contract to the cutoff date, improvement curves, and any other available production cost history pertaining to the item(s) to which your proposal relates.
- (11) Enter total incurred costs (Total of Columns (8), (9), and (10)).
- (12) Enter those necessary and reasonable costs that in your judgment will properly be incurred in completing the remaining work to be performed under the contract with respect to the item(s) to which your proposal relates.
- (13) Enter total estimated cost (Total of Columns (11) and (12)).
- (14) Identify the attachment in which the information supporting the specific cost element may be found.

(Attach separate pages as necessary.)

**Subpart 15.5—Preaward, Award, and
Postaward Notifications, Protests, and
Mistakes**

15.501 Definition.

“Day,” as used in this subpart, has the meaning set forth at 33.101.

15.502 Applicability.

This subpart applies to competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). The procedures in 15.504, 15.506, 15.507, 15.508, and 15.509, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d)(1) and (2).

15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(b) *Postaward notices.* (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

- (i) The number of offerors solicited;
- (ii) The number of proposals received;
- (iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in Part 13.

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror's written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award.

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see 15.506(d)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under 15.506. In that event, the contracting officer shall include the information at 15.506(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.506(e).

(g) An official summary of the debriefing shall be included in the contract file.

15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with 15.503(b), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see 15.505(a)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to 15.505(a)(2), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to 15.505(a)(2) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

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

(4) A summary of the rationale for award;

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

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by 24.202 including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with Part 33. Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at 14.407-4.

15.509 Forms.

Optional Form 307, Contract Award, GPO Form 3201B, Award/Contract, or SF 33, Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. If these forms are not used, the award document shall incorporate the agreement and award language from the OF 307.

Subpart 15.6—Unsolicited Proposals

15.600 Scope of subpart.

This subpart sets forth policies and procedures concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

15.601 Definitions.

As used in this subpart—

“Advertising material” means material designed to acquaint the Government with a prospective contractor's present products, services, or potential capabilities, or designed to stimulate the Government's interest in buying such products or services.

“Commercial item offer” means an offer of a commercial item that the vendor wishes to see introduced in the Government's supply system as an alternate or a replacement for an existing supply item. This term does not include innovative or unique configurations or uses of commercial items that are being offered for further development and that may be submitted as an unsolicited proposal.

“Contribution” means a concept, suggestion, or idea presented to the Government for its use with no indication that the source intends to devote any further effort to it on the Government's behalf.

15.602 Policy.

It is the policy of the Government to encourage the submission of new and innovative ideas in response to Broad Agency Announcements, Program Research and Development Announcements, or any other Government-initiated solicitation or program. When the new and innovative ideas do not fall under topic areas publicized under those programs or techniques, the ideas may be submitted as unsolicited proposals.

15.603 General.

(a) Unsolicited proposals allow unique and innovative ideas or approaches that have been developed outside the Government to be made available to Government agencies for use in accomplishment of their missions. Unsolicited proposals are offered with the intent that the Government will enter into a contract with the offeror for research and development or other efforts supporting the Government mission, and often represent a substantial investment of time and effort by the offeror.

(b) Advertising material, commercial item offers, or contributions, as defined in 15.601, or routine correspondence on technical issues, are not unsolicited proposals.

(c) A valid unsolicited proposal must—

- (1) Be innovative and unique;
- (2) Be independently originated and developed by the offeror;

(3) Be prepared without Government supervision, endorsement, direction, or direct Government involvement;

(4) Include sufficient detail to permit a determination that Government support could be worthwhile and the proposed work could benefit the agency's research and development or other mission responsibilities; and

(5) Not be an advance proposal for a known agency requirement that can be acquired by competitive methods.

(d) Unsolicited proposals in response to a publicized general statement of agency needs are considered to be independently originated.

(e) MMS must evaluate unsolicited proposals for energy-savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

15.604 Agency points of contact.

(a) Preliminary contact with agency technical or other appropriate personnel before preparing a detailed unsolicited proposal or submitting proprietary information to the Government may save considerable time and effort for both parties (see 15.201). Agencies must make available to potential offerors of unsolicited proposals at least the following information:

(1) Definition (see 2.101) and content (see 15.605) of an unsolicited proposal acceptable for formal evaluation.

(2) Requirements concerning responsible prospective contractors (see Subpart 9.1), and organizational conflicts of interest (see Subpart 9.5).

(3) Guidance on preferred methods for submitting ideas/concepts to the Government.

(4) Agency points of contact for information regarding advertising, contributions, and other types of transactions similar to unsolicited proposals.

(5) Information sources on agency objectives and areas of potential interest.

(6) Procedures for submission and evaluation of unsolicited proposals.

(7) Instructions for identifying and marking proprietary information so that it is protected and restrictive legends conform to 15.609.

(b) Only the cognizant contracting officer has the authority to bind the Government regarding unsolicited proposals.

15.605 Content of unsolicited proposals.

Unsolicited proposals should contain the following information to permit consideration in an objective and timely manner:

(a) Basic information including—

(1) Offeror's name and address and type of organization; *e.g.*, profit, nonprofit, educational, small business;

(2) Names and telephone numbers of technical and business personnel to be contacted for evaluation or negotiation purposes;

(3) Identification of proprietary data to be used only for evaluation purposes;

(4) Names of other Federal, State, or local agencies or parties receiving the proposal or funding the proposed effort;

(5) Date of submission; and

(6) Signature of a person authorized to represent and contractually obligate the offeror.

(b) Technical information including—

(1) Concise title and abstract (approximately 200 words) of the proposed effort;

(2) A reasonably complete discussion stating the objectives of the effort or activity, the method of approach and extent of effort to be employed, the nature and extent of the anticipated results, and the manner in which the work will help to support accomplishment of the agency's mission;

(3) Names and biographical information on the offeror's key personnel who would be involved, including alternates; and

(4) Type of support needed from the agency; *e.g.*, facilities, equipment, materials, or personnel resources.

(c) Supporting information including—

(1) Proposed price or total estimated cost for the effort in sufficient detail for meaningful evaluation;

(2) Period of time for which the proposal is valid (a 6-month minimum is suggested);

(3) Type of contract preferred;

(4) Proposed duration of effort;

(5) Brief description of the organization, previous experience, relevant past performance, and facilities to be used;

(6) Other statements, if applicable, about organizational conflicts of interest, security clearances, and environmental impacts; and

(7) The names and telephone numbers of agency technical or other agency points of contact already contacted regarding the proposal.

15.606 Procedures.

(a) MMS shall establish procedures for controlling the receipt, evaluation, and timely disposition of unsolicited proposals consistent with the requirements of this subpart. The procedures shall include controls on the reproduction and disposition of proposal material, particularly data identified by the offeror as subject to duplication, use, or disclosure restrictions.

(b) MMS shall establish agency points of contact (see 15.604) to coordinate the receipt and handling of unsolicited proposals.

15.606-1 Receipt and initial review.

(a) Before initiating a comprehensive evaluation, the agency contact point shall determine if the proposal—

(1) Is a valid unsolicited proposal, meeting the requirements of 15.603(c);

(2) Is suitable for submission in response to an existing agency requirement (see 15.602);

(3) Is related to the agency mission;

(4) Contains sufficient technical and cost information for evaluation;

(5) Has been approved by a responsible official or other representative authorized to obligate the offeror contractually; and

(6) Complies with the marking requirements of 15.609.

(b) If the proposal meets these requirements, the contact point shall promptly acknowledge receipt and process the proposal.

(c) If a proposal is rejected because the proposal does not meet the requirements of paragraph (a) of this subsection, the agency contact point shall promptly inform the offeror of the reasons for rejection in writing and of the proposed disposition of the unsolicited proposal.

15.606-2 Evaluation.

(a) Comprehensive evaluations shall be coordinated by the agency contact point, who shall attach or imprint on each unsolicited proposal, circulated for evaluation, the legend required by 15.609(d). When performing a comprehensive evaluation of an unsolicited proposal, evaluators shall consider the following factors, in addition to any others appropriate for the particular proposal:

(1) Unique, innovative, and meritorious methods, approaches, or concepts demonstrated by the proposal;

(2) Overall scientific, technical, or socioeconomic merits of the proposal;

(3) Potential contribution of the effort to the agency's specific mission;

(4) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these that are integral factors for achieving the proposal objectives;

(5) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel critical to achieving the proposal objectives; and

(6) The realism of the proposed cost.

(b) The evaluators shall notify the agency point of contact of their recommendations when the evaluation is completed.

15.607 Criteria for acceptance and negotiation of an unsolicited proposal.

(a) A favorable comprehensive evaluation of an unsolicited proposal does not, in itself, justify awarding a contract without providing for full and open competition. The agency point of contact shall return an unsolicited proposal to the offeror, citing reasons, when its substance—

(1) Is available to the Government without restriction from another source;

(2) Closely resembles a pending competitive acquisition requirement;

- (3) Does not relate to the activity’s mission; or
- (4) Does not demonstrate an innovative and unique method, approach, or concept, or is otherwise not deemed a meritorious proposal.

(b) The contracting officer may commence negotiations on a sole source basis only when—

- (1) An unsolicited proposal has received a favorable comprehensive evaluation;
- (2) A justification and approval has been obtained (see 6.302-1(a)(2)(i) for research proposals or other appropriate provisions of Subpart 6.3, and 6.303-2(b));
- (3) The agency technical office sponsoring the contract furnishes the necessary funds; and
- (4) The contracting officer has complied with the synopsis requirements of Subpart 5.2.

15.608 Prohibitions.

(a) Government personnel shall not use any data, concept, idea, or other part of an unsolicited proposal as the basis, or part of the basis, for a solicitation or in negotiations with any other firm unless the offeror is notified of and agrees to the intended use. However, this prohibition does not preclude using any data, concept, or idea in the proposal that also is available from another source without restriction.

(b) Government personnel shall not disclose restrictively marked information (see 3.104 and 15.609) included in an unsolicited proposal. The disclosure of such information concerning trade secrets, processes, operations, style of work, apparatus, and other matters, except as authorized by law, may result in criminal penalties under 18 U.S.C. 1905.

15.609 Limited use of data.

(a) An unsolicited proposal may include data that the offeror does not want disclosed to the public for any purpose or used by the Government except for evaluation purposes. If the offeror wishes to restrict the data, the title page must be marked with the following legend:

USE AND DISCLOSURE OF DATA

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. However, if a contract is awarded to this offeror as a result of—or in connection with—the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government’s right to use information contained in these data if they are obtained from another source without restriction. The data subject to this restriction are contained in Sheets [*insert numbers or other identification of sheets*].

(b) The offeror shall also mark each sheet of data it wishes to restrict with the following legend: Use or disclosure of data

contained on this sheet is subject to the restriction on the title page of this proposal.

(c) The agency point of contact shall return to the offeror any unsolicited proposal marked with a legend different from that provided in paragraph (a) of this section. The return letter will state that the proposal cannot be considered because it is impracticable for the Government to comply with the legend and that the agency will consider the proposal if it is resubmitted with the proper legend.

(d) The agency point of contact shall place a cover sheet on the proposal or clearly mark it as follows, unless the offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the proposal:

UNSOLICITED PROPOSAL—USE OF DATA LIMITED

All Government personnel must exercise extreme care to ensure that the information in this proposal is not disclosed to an individual who has not been authorized access to such data in accordance with MMAR 3.104, and is not duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of the proposal, without the written permission of the offeror. If a contract is awarded on the basis of this proposal, the terms of the contract shall control disclosure and use. This notice does not limit the Government’s right to use information contained in the proposal if it is obtainable from another source without restriction. This is a Government notice, and shall not by itself be construed to impose any liability upon the Government or Government personnel for disclosure or use of data contained in this proposal.

(e) Use the notice in paragraph (d) of this section solely as a manner of handling unsolicited proposals that will be compatible with this subpart. However, do not use this notice to justify withholding of a record, or to improperly deny the public access to a record, where an obligation is imposed by the Freedom of Information Act (5 U.S.C. 552). An offeror should identify trade secrets, commercial or financial information, and privileged or confidential information to the Government (see paragraph (a) of this section).

(f) When an agency receives an unsolicited proposal without any restrictive legend from an educational or nonprofit organization or institution, and an evaluation outside the Government is necessary, the agency point of contact shall—

- (1) Attach a cover sheet clearly marked with the legend in paragraph (d) of this section;
- (2) Change the beginning of this legend to read “All Government and non-Government personnel . . .”; and
- (3) Require any non-Government evaluator to agree in writing that data in the proposal will not be disclosed to others outside the Government.

(g) If the proposal is received with the restrictive legend (see paragraph (a) of this section), the modified cover sheet shall also be used and permission shall be obtained from the offeror before release of the proposal for evaluation by non-Government personnel.

(h) When an agency receives an unsolicited proposal with or without a restrictive legend from other than an educational or nonprofit organization or institution, and evaluation by Government personnel outside the agency or by experts outside of the Government is necessary, written permission must be obtained from the offeror before release of the proposal for evaluation. The agency point of contact shall—

(1) Clearly mark the cover sheet with the legend in paragraph (d) or as modified in paragraph (f) of this section; and

(2) Obtain a written agreement from any non-Government evaluator stating that data in the proposal will not be disclosed to persons outside the Government.

* * * * *

PART 16—TYPES OF CONTRACTS

Sec.

16.000 Scope of part.

Subpart 16.1—Selecting Contract Types

16.101 General.

16.102 Policies.

16.103 Negotiating contract type.

16.104 Factors in selecting contract types.

16.105 Solicitation provision.

Subpart 16.2—Fixed-Price Contracts

16.201 General.

16.202 Firm-fixed-price contracts.

16.202-1 Description.

16.202-2 Application.

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

16.203-2 Application.

16.203-3 Limitations.

16.203-4 Contract clauses.

16.204 Fixed-price incentive contracts.

16.205 Fixed-price contracts with prospective price redetermination.

16.205-1 Description.

16.205-2 Application.

16.205-3 Limitations.

16.205-4 Contract clause.

16.206 Fixed-ceiling-price contracts with retroactive price redetermination.

16.206-1 Description.

16.206-2 Application.

16.206-3 Limitations.

16.206-4 Contract clause.

16.207 Firm-fixed-price, level-of-effort term contracts.

16.207-1 Description.

16.207-2 Application.

16.207-3 Limitations.

Subpart 16.3—Cost-Reimbursement Contracts

16.301 General.

16.301-1 Description.

16.301-2 Application.

16.301-3 Limitations.

16.302 Cost contracts.

16.303 Cost-sharing contracts.

16.304 Cost-plus-incentive-fee contracts.

16.305 Cost-plus-award-fee contracts.

16.306 Cost-plus-fixed-fee contracts.

16.307 Contract clauses.

Subpart 16.4—Incentive Contracts

16.401 General.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

16.402-2 Performance incentives.

16.402-3 Delivery incentives.

16.402-4 Structuring multiple-incentive contracts.

16.403 Fixed-price incentive contracts.

16.403-1 Fixed-price incentive (firm target) contracts.

16.403-2 Fixed-price incentive (successive targets) contracts.

16.404 Fixed-price contracts with award fees.

16.405 Cost-reimbursement incentive contracts.

16.405-1 Cost-plus-incentive-fee contracts.

16.405-2 Cost-plus-award-fee contracts.

16.406 Contract clauses.

Subpart 16.5—Indefinite-Delivery Contracts

16.500 Scope of subpart.

16.501-1 Definitions.

16.501-2 General.

16.502 Definite-quantity contracts.

16.503 Requirements contracts.

16.504 Indefinite-quantity contracts.

16.505 Ordering.

16.506 Solicitation provisions and contract clauses.

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

16.601 Time-and-materials contracts.

16.602 Labor-hour contracts.

16.603 Letter contracts.

16.603-1 Description.

16.603-2 Application.

16.603-3 Limitations.

16.603-4 Contract clauses.

Subpart 16.7—Agreements

16.701 Scope.

16.702 Basic agreements.

16.703 Basic ordering agreements.

This page intentionally left blank.

16.000 Scope of part.

This part describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

Subpart 16.1—Selecting Contract Types**16.101 General.**

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by GPO. Contract types vary according to—

- (1) The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- (2) The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

(b) The contract types are grouped into two broad categories: fixed-price contracts (see Subpart 16.2) and cost-reimbursement contracts (see Subpart 16.3). The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see Subpart 16.4), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

16.102 Policies.

(a) Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under Part 15 may be of any type or combination of types that will promote the Government's interest, except as restricted in this part. Contract types not described in this regulation shall not be used, except as a deviation under Subpart 1.4.

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used. Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in Subpart 44.2 for cost-reimbursement contracts and Subparts 16.2 and 16.4 for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are specified in 1.704.

16.103 Negotiating contract type.

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are—

- (1) Fixed-price acquisitions made under simplified acquisition procedures;
- (2) Contracts on a firm fixed-price basis other than those for major systems or research and development; and
- (3) Awards on the set-aside portion of sealed bid partial set-asides for small business.

16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See 15.404-1(b).)

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a con-

tract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives to ensure timely contract performance.

(f) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment terms.

(g) *Contractor's technical capability and financial responsibility.*

(h) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed

contract type. This factor may be critical when the contract type requires price revision while performance is in progress, or when a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis.

(i) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(j) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

(k) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at 52.216-1, Type of Contract, in a solicitation unless it is for—

(a) A fixed-price acquisition made under simplified acquisition procedures; or

(b) Information or planning purposes.

Subpart 16.2—Fixed-Price Contracts

16.201 General.

Fixed-price types of contracts provide for a firm price or, in appropriate cases, an adjustable price. Fixed-price contracts providing for an adjustable price may include a ceiling price, a target price (including target cost), or both. Unless otherwise specified in the contract, the ceiling price or target price is subject to adjustment only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances. The contracting officer shall use firm-fixed-price or fixed-price with economic price adjustment contracts when acquiring commercial items.

16.202 Firm-fixed-price contracts.

16.202-1 Description.

A firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. This contract type places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss. It provides maximum incentive for the contractor to control costs and perform effectively and imposes a minimum administrative burden upon the contracting parties.

16.202-2 Application.

A firm-fixed-price contract is suitable for acquiring commercial items (see Parts 2 and 12) or for acquiring other supplies or services on the basis of reasonably definite functional or detailed specifications (see Part 11) when the contracting officer can establish fair and reasonable prices at the outset, such as when—

- (a) There is adequate price competition;
- (b) There are reasonable price comparisons with prior purchases of the same or similar supplies or services made on a competitive basis or supported by valid cost or pricing data;
- (c) Available cost or pricing information permits realistic estimates of the probable costs of performance; or
- (d) Performance uncertainties can be identified and reasonable estimates of their cost impact can be made, and the contractor is willing to accept a firm fixed price representing assumption of the risks involved.

16.203 Fixed-price contracts with economic price adjustment.

16.203-1 Description.

A fixed-price contract with economic price adjustment provides for upward and downward revision of the stated contract price upon the occurrence of specified contingencies. Economic price adjustments are of three general types:

(a) *Adjustments based on established prices.* These price adjustments are based on increases or decreases from an agreed-upon level in published or otherwise established prices of specific items or the contract end items.

(b) *Adjustments based on actual costs of labor or material.* These price adjustments are based on increases or decreases in specified costs of labor or material that the contractor actually experiences during contract performance.

(c) *Adjustments based on cost indexes of labor or material.* These price adjustments are based on increases or decreases in labor or material cost standards or indexes that are specifically identified in the contract.

16.203-2 Application.

A fixed-price contract with economic price adjustment may be used when (i) there is serious doubt concerning the stability of market or labor conditions that will exist during an extended period of contract performance, and (ii) contingencies that would otherwise be included in the contract price can be identified and covered separately in the contract. Price adjustments based on established prices should normally be restricted to industry-wide contingencies. Price adjustments based on labor and material costs should be limited to contingencies beyond the contractor's control. For use of economic price adjustment in sealed bid contracts, see 14.408-4.

(a) In establishing the base level from which adjustment will be made, the contracting officer shall ensure that contingency allowances are not duplicated by inclusion in both the base price and the adjustment requested by the contractor under economic price adjustment clause.

(b) In contracts that do not require submission of cost or pricing data, the contracting officer shall obtain adequate information to establish the base level from which adjustment will be made and may require verification of data submitted.

16.203-3 Limitations.

A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary either to protect the contractor and the Government against significant fluctuations in labor or material costs or to provide for contract price adjustment in the event of changes in the contractor's established prices.

16.203-4 Contract clauses.

(a) *Adjustment based on established prices—standard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-2, Economic Price Adjustment—Standard Supplies, or an agency-prescribed clause as authorized in paragraph (a)(2) of this subsection, in solicitations and contracts when all of the following conditions apply:

- (i) A fixed-price contract is contemplated.

(ii) The requirement is for standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all the conditions in paragraph (a)(1) of this subsection apply and the contracting officer determines that the use of the clause at 52.216-2 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-2.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(b) *Adjustment based on established prices—semistandard supplies.* (1) The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-3, Economic Price Adjustment—Semistandard Supplies, or an agency-prescribed clause as authorized in paragraph (b)(2) of this section, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) The requirement is for semistandard supplies for which the prices can be reasonably related to the prices of nearly equivalent standard supplies that have an established catalog or market price.

(iii) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in paragraph (b)(1) of this subsection apply and the contracting officer determines that the use of the clause at 52.216-3 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-3.

(3) If the negotiated unit price reflects a net price after applying a trade discount from a catalog or list price, the contracting officer shall document in the contract file both the catalog or list price and the discount. (This does not apply to prompt payment or cash discounts.)

(4) Before entering into the contract, the contracting officer and contractor must agree in writing on the identity of the standard supplies and the corresponding contract line items to which the clause applies.

(5) If the supplies are standard, except for preservation, packaging, and packing requirements, the clause prescribed in 16.203-4(a) shall be used rather than this clause.

(c) *Adjustments based on actual cost of labor or material.* (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment—Labor and Material, or an agency-prescribed clause as authorized in subparagraph (c)(2) of this section, in solicitations and contracts when all of the following conditions apply:

(i) A fixed-price contract is contemplated.

(ii) There is no major element of design engineering or development work involved.

(iii) One or more identifiable labor or material cost factors are subject to change.

(iv) The contracting officer has made the determination specified in 16.203-3.

(2) If all conditions in paragraph (c)(1) of this section apply and the contracting officer determines that the use of the clause at 52.216-4 is inappropriate, the contracting officer may use an agency-prescribed clause instead of the clause at 52.216-4.

(3) The contracting officer shall describe in detail in the contract Schedule—

(i) The types of labor and materials subject to adjustment under the clause;

(ii) The labor rates, including fringe benefits (if any) and unit prices of materials that may be increased or decreased; and

(iii) The quantities of the specified labor and materials allocable to each unit to be delivered under the contract.

(4) In negotiating adjustments under the clause, the contracting officer shall—

(i) Consider work in process and materials on hand at the time of changes in labor rates, including fringe benefits (if any) or material prices;

(ii) Not include in adjustments any indirect cost (except fringe benefits as defined in 31.205-6(m)) or profit; and

(iii) Consider only those fringe benefits specified in the contract Schedule.

(d) *Adjustments based on cost indexes of labor or material.* The contracting officer should consider using an economic price adjustment clause based on cost indexes of labor or material under the circumstances and subject to approval as described in paragraphs (d)(1) and (d)(2) of this section.

(1) A clause providing adjustment based on cost indexes of labor or materials may be appropriate when—

(i) The contract involves an extended period of performance with significant costs to be incurred beyond 1 year after performance begins;

(ii) The contract amount subject to adjustment is substantial; and

(iii) The economic variables for labor and materials are too unstable to permit a reasonable division of risk between the Government and the contractor, without this type of clause.

(2) Any clause using this method shall be prepared and approved under agency procedures. Because of the variations in circumstances and clause wording that may arise, no standard clause is prescribed.

16.204 Fixed-price incentive contracts.

A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by a formula based on the relationship of final negotiated total cost to total target cost. Fixed-price incentive contracts are covered in Subpart 16.4, Incentive Contracts. See 16.403 for more complete descriptions, application, and limitations for these contracts. Prescribed clauses are found at 16.406.

16.205 Fixed-price contracts with prospective price redetermination.**16.205-1 Description.**

A fixed-price contract with prospective price redetermination provides for—

- (a) A firm fixed price for an initial period of contract deliveries or performance; and
- (b) Prospective redetermination, at a stated time or times during performance, of the price for subsequent periods of performance.

16.205-2 Application.

A fixed-price contract with prospective price redetermination may be used in acquisitions of quantity production or services for which it is possible to negotiate a fair and reasonable firm fixed price for an initial period, but not for subsequent periods of contract performance.

(a) The initial period should be the longest period for which it is possible to negotiate a fair and reasonable firm fixed price. Each subsequent pricing period should be at least 12 months.

(b) The contract may provide for a ceiling price based on evaluation of the uncertainties involved in performance and their possible cost impact. This ceiling price should provide for assumption of a reasonable proportion of the risk by the contractor and, once established, may be adjusted only by operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

16.205-3 Limitations.

This contract type shall not be used unless—

- (a) Negotiations have established that—
 - (1) The conditions for use of a firm-fixed-price contract are not present (see 16.202-2); and
 - (2) A fixed-price incentive contract would not be more appropriate;
- (b) The contractor's accounting system is adequate for price redetermination;
- (c) The prospective pricing periods can be made to conform with operation of the contractor's accounting system; and

(d) There is reasonable assurance that price redetermination actions will take place promptly at the specified times.

16.205-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-5, Price Redetermination—Prospective, in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply.

16.206 Fixed-ceiling-price contracts with retroactive price redetermination.**16.206-1 Description.**

A fixed-ceiling-price contract with retroactive price redetermination provides for—

- (a) A fixed ceiling price; and
- (b) Retroactive price redetermination within the ceiling after completion of the contract.

16.206-2 Application.

A fixed-ceiling-price contract with retroactive price redetermination is appropriate for research and development contracts estimated at \$100,000 or less when it is established at the outset that a fair and reasonable firm fixed price cannot be negotiated and that the amount involved and short performance period make the use of any other fixed-price contract type impracticable.

(a) A ceiling price shall be negotiated for the contract at a level that reflects a reasonable sharing of risk by the contractor. The established ceiling price may be adjusted only if required by the operation of contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(b) The contract should be awarded only after negotiation of a billing price that is as fair and reasonable as the circumstances permit.

(c) Since this contract type provides the contractor no cost control incentive except the ceiling price, the contracting officer should make clear to the contractor during discussion before award that the contractor's management effectiveness and ingenuity will be considered in retroactively redetermining the price.

16.206-3 Limitations.

This contract type shall not be used unless—

- (a) The contract is for research and development and the estimated cost is \$100,000 or less;
- (b) The contractor's accounting system is adequate for price redetermination;
- (c) There is reasonable assurance that the price redetermination will take place promptly at the specified time; and

(d) The head of the contracting activity (or a higher-level official, if required by agency procedures) approves its use in writing.

16.206-4 Contract clause.

The contracting officer shall, when contracting by negotiation, insert the clause at 52.216-6, Price Redetermination—Retroactive, in solicitations and contracts when a fixed-price contract is contemplated and the conditions in 16.206-2 and 16.206-3(a) through (d) apply.

16.207 Firm-fixed-price, level-of-effort term contracts.**16.207-1 Description.**

A firm-fixed-price, level-of-effort term contract requires—

(a) The contractor to provide a specified level of effort, over a stated period of time, on work that can be stated only in general terms; and

(b) The Government to pay the contractor a fixed dollar amount.

16.207-2 Application.

A firm-fixed-price, level-of-effort term contract is suitable for investigation or study in a specific research and development area. The product of the contract is usually a report showing the results achieved through application of the required level of effort. However, payment is based on the effort expended rather than on the results achieved.

16.207-3 Limitations.

This contract type may be used only when—

(a) The work required cannot otherwise be clearly defined;

(b) The required level of effort is identified and agreed upon in advance;

(c) There is reasonable assurance that the intended result cannot be achieved by expending less than the stipulated effort; and

(d) The contract price is \$100,000 or less, unless approved by the chief of the contracting office.

Subpart 16.3—Cost-Reimbursement Contracts

16.301 General.

16.301-1 Description.

Cost-reimbursement types of contracts provide for payment of allowable incurred costs, to the extent prescribed in the contract. These contracts establish an estimate of total cost for the purpose of obligating funds and establishing a ceiling that the contractor may not exceed (except at its own risk) without the approval of the contracting officer.

16.301-2 Application.

Cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

(b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items (see Parts 2 and 12).

16.302 Cost contracts.

(a) *Description.* A cost contract is a cost-reimbursement contract in which the contractor receives no fee.

(b) *Application.* A cost contract may be appropriate for research and development work, particularly with nonprofit educational institutions or other nonprofit organizations, and for facilities contracts.

(c) *Limitations.* See 16.301-3.

16.303 Cost-sharing contracts.

(a) *Description.* A cost-sharing contract is a cost-reimbursement contract in which the contractor receives no fee and is reimbursed only for an agreed-upon portion of its allowable costs.

(b) *Application.* A cost-sharing contract may be used when the contractor agrees to absorb a portion of the costs, in the expectation of substantial compensating benefits.

(c) *Limitations.* See 16.301-3.

16.304 Cost-plus-incentive-fee contracts.

A cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for an initially negotiated fee to be adjusted later by a formula based on the relationship of total

allowable costs to total target costs. Cost-plus-incentive-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.405-1 for a more complete description and discussion of application of these contracts. See 16.301-3 for limitations.

16.305 Cost-plus-award-fee contracts.

A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (a) a base amount (which may be zero) fixed at inception of the contract and (b) an award amount, based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance. Cost-plus-award-fee contracts are covered in Subpart 16.4, Incentive Contracts. See 16.405-2 for a more complete description and discussion of application of these contracts. See 16.301-3 and 16.405-2(c) for limitations.

16.306 Cost-plus-fixed-fee contracts.

(a) *Description.* A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual cost, but may be adjusted as a result of changes in the work to be performed under the contract. This contract type permits contracting for efforts that might otherwise present too great a risk to contractors, but it provides the contractor only a minimum incentive to control costs.

(b) *Application.* (1) A cost-plus-fixed-fee contract is suitable for use when the conditions of 16.301-2 are present and, for example—

(i) The contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown; or

(ii) The contract is for development and test, and using a cost-plus-incentive-fee contract is not practical.

(2) A cost-plus-fixed-fee contract normally should not be used in development of major systems (see Part 34) once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the Government has established reasonably firm performance objectives and schedules.

(c) *Limitations.* No cost-plus-fixed-fee contract shall be awarded unless the contracting officer complies with all limitations in 15.404-4(c)(4)(i) and 16.301-3.

(d) *Completion and term forms.* A cost-plus-fixed-fee contract may take one of two basic forms—completion or term.

(1) The completion form describes the scope of work by stating a definite goal or target and specifying an end product. This form of contract normally requires the contractor to complete and deliver the specified end product (*e.g.*, a final report of research accomplishing the goal or target) within the estimated cost, if possible, as a condition for payment of the

entire fixed fee. However, in the event the work cannot be completed within the estimated cost, the Government may require more effort without increase in fee, provided the Government increases the estimated cost.

(2) The term form describes the scope of work in general terms and obligates the contractor to devote a specified level of effort for a stated time period. Under this form, if the performance is considered satisfactory by the Government, the fixed fee is payable at the expiration of the agreed-upon period, upon contractor statement that the level of effort specified in the contract has been expended in performing the contract work. Renewal for further periods of performance is a new acquisition that involves new cost and fee arrangements.

(3) Because of the differences in obligation assumed by the contractor, the completion form is preferred over the term form whenever the work, or specific milestones for the work, can be defined well enough to permit development of estimates within which the contractor can be expected to complete the work.

(4) The term form shall not be used unless the contractor is obligated by the contract to provide a specific level of effort within a definite time period.

16.307 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.216-7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract (other than a facilities contract) is contemplated. If the contract is with an educational institution, modify the clause by deleting from paragraph (a) the words “Subpart 31.2” and substituting for them “Subpart 31.3.” If the contract is with a State or local government, modify the clause by deleting from paragraph (a) the words “Subpart 31.2” and substituting for them “Subpart 31.6.” If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A-122, modify the clause by deleting from paragraph (a) the words “Subpart 31.2” and substituting for them “Subpart 31.7.”

(2) If the contract is a construction contract and contains the clause at 52.232-27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216-7 with its Alternate I.

(b) The contracting officer shall insert the clause at 52.216-8, Fixed Fee, in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

(c) The contracting officer shall insert the clause at 52.216-9, Fixed-Fee—Construction, in solicitations and contracts

when a cost-plus-fixed-fee construction contract is contemplated.

(d) The contracting officer shall insert the clause at 52.216-10, Incentive Fee, in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated.

(e)(1) The contracting officer shall insert the clause at 52.216-11, Cost Contract—No Fee, in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract.

(2) If a cost-reimbursement research and development contract with an educational institution or a nonprofit organization that provides no fee or other payment above cost and is not a cost-sharing contract is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(f)(1) The contracting officer shall insert the clause at 52.216-12, Cost-Sharing Contract—No Fee, in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated.

(2) If a cost-sharing research and development contract with an educational institution or a nonprofit organization is contemplated, and if the contracting officer determines that withholding of a portion of allowable costs is not required, the contracting officer shall use the clause with its Alternate I.

(g)(1) The contracting officer shall insert the clause at 52.216-13, Allowable Cost and Payment—Facilities, in solicitations and contracts when a cost-reimbursement consolidated facilities contract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated.

(2) If a facilities acquisition contract is contemplated and, in the judgment of the contracting officer, it may be necessary to withhold payment of an amount to protect the Government’s interest, the contracting officer shall use the clause with its Alternate I.

(h) The contracting officer shall insert the clause at 52.216-14, Allowable Cost and Payment—Facilities Use, in solicitations and contracts when a facilities use contract is contemplated.

(i) The contracting officer shall insert the clause at 52.216-15, Predetermined Indirect Cost Rates, in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution (see 42.705-3(b)) is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words “Subpart 31.1” and substituting for them “section 31.106.”

Subpart 16.4—Incentive Contracts

16.401 General.

(a) Incentive contracts as described in this subpart are appropriate when a firm-fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs and, in certain instances, with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance. Incentive contracts are designed to obtain specific acquisition objectives by—

(1) Establishing reasonable and attainable targets that are clearly communicated to the contractor; and

(2) Including appropriate incentive arrangements designed to—

(i) motivate contractor efforts that might not otherwise be emphasized; and

(ii) discourage contractor inefficiency and waste.

(b) When predetermined, formula-type incentives on technical performance or delivery are included, increases in profit or fee are provided only for achievement that surpasses the targets, and decreases are provided for to the extent that such targets are not met. The incentive increases or decreases are applied to performance targets rather than minimum performance requirements.

(c) The two basic categories of incentive contracts are fixed-price incentive contracts (see 16.403 and 16.404) and cost-reimbursement incentive contracts (see 16.405). Since it is usually to the Government's advantage for the contractor to assume substantial cost responsibility and an appropriate share of the cost risk, fixed-price incentive contracts are preferred when contract costs and performance requirements are reasonably certain. Cost-reimbursement incentive contracts are subject to the overall limitations in 16.301 that apply to all cost-reimbursement contracts.

(d) Award-fee contracts are a type of incentive contract.

16.402 Application of predetermined, formula-type incentives.

16.402-1 Cost incentives.

(a) Most incentive contracts include only cost incentives, which take the form of a profit or fee adjustment formula and are intended to motivate the contractor to effectively manage costs. No incentive contract may provide for other incentives without also providing a cost incentive (or constraint).

(b) Except for award-fee contracts (see 16.404 and 16.405-2), incentive contracts include a target cost, a target profit or fee, and a profit or fee adjustment formula that (within the constraints of a price ceiling or minimum and maximum fee) provides that—

(1) Actual cost that meets the target will result in the target profit or fee;

(2) Actual cost that exceeds the target will result in downward adjustment of target profit or fee; and

(3) Actual cost that is below the target will result in upward adjustment of target profit or fee.

16.402-2 Performance incentives.

(a) Performance incentives may be considered in connection with specific product characteristics (*e.g.*, a missile range, an aircraft speed, an engine thrust, or a vehicle maneuverability) or other specific elements of the contractor's performance. These incentives should be designed to relate profit or fee to results achieved by the contractor, compared with specified targets.

(b) To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

(c) Technical performance incentives may be particularly appropriate in major systems contracts, both in development (when performance objectives are known and the fabrication of prototypes for test and evaluation is required) and in production (if improved performance is attainable and highly desirable to the Government).

(d) Technical performance incentives may involve a variety of specific characteristics that contribute to the overall performance of the end item. Accordingly, the incentives on individual technical characteristics must be balanced so that no one of them is exaggerated to the detriment of the overall performance of the end item.

(e) Performance tests and/or assessments of work performance are generally essential in order to determine the degree of attainment of performance targets. Therefore, the contract must be as specific as possible in establishing test criteria (such as testing conditions, instrumentation precision, and data interpretation) and performance standards (such as the quality levels of services to be provided).

(f) Because performance incentives present complex problems in contract administration, the contracting officer should negotiate them in full coordination with Government engineering and pricing specialists.

(g) It is essential that the Government and contractor agree explicitly on the effect that contract changes (*e.g.*, pursuant to the Changes clause) will have on performance incentives.

(h) The contracting officer must exercise care, in establishing performance criteria, to recognize that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

16.402-3 Delivery incentives.

(a) Delivery incentives should be considered when improvement from a required delivery schedule is a significant Government objective. It is important to determine the

Government's primary objectives in a given contract (e.g., earliest possible delivery or earliest quantity production).

(b) Incentive arrangements on delivery should specify the application of the reward-penalty structure in the event of Government-caused delays or other delays beyond the control, and without the fault or negligence, of the contractor or subcontractor.

16.402-4 Structuring multiple-incentive contracts.

A properly structured multiple-incentive arrangement should—

(a) Motivate the contractor to strive for outstanding results in all incentive areas; and

(b) Compel trade-off decisions among the incentive areas, consistent with the Government's overall objectives for the acquisition. Because of the interdependency of the Government's cost, the technical performance, and the delivery goals, a contract that emphasizes only one of the goals may jeopardize control over the others. Because outstanding results may not be attainable for each of the incentive areas, all multiple-incentive contracts must include a cost incentive (or constraint) that operates to preclude rewarding a contractor for superior technical performance or delivery results when the cost of those results outweighs their value to the Government.

16.403 Fixed-price incentive contracts.

(a) *Description.* A fixed-price incentive contract is a fixed-price contract that provides for adjusting profit and establishing the final contract price by application of a formula based on the relationship of total final negotiated cost to total target cost. The final price is subject to a price ceiling, negotiated at the outset. The two forms of fixed-price incentive contracts, firm target and successive targets, are further described in 16.403-1 and 16.403-2 below.

(b) *Application.* A fixed-price incentive contract is appropriate when—

(1) A firm-fixed-price contract is not suitable;

(2) The nature of the supplies or services being acquired and other circumstances of the acquisition are such that the contractor's assumption of a degree of cost responsibility will provide a positive profit incentive for effective cost control and performance; and

(3) If the contract also includes incentives on technical performance and/or delivery, the performance requirements provide a reasonable opportunity for the incentives to have a meaningful impact on the contractor's management of the work.

(c) *Billing prices.* In fixed-price incentive contracts, billing prices are established as an interim basis for payment. These billing prices may be adjusted, within the ceiling limits, upon request of either party to the contract, when it becomes appar-

ent that final negotiated cost will be substantially different from the target cost.

16.403-1 Fixed-price incentive (firm target) contracts.

(a) *Description.* A fixed-price incentive (firm target) contract specifies a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a profit adjustment formula. These elements are all negotiated at the outset. The price ceiling is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses. When the contractor completes performance, the parties negotiate the final cost, and the final price is established by applying the formula. When the final cost is less than the target cost, application of the formula results in a final profit greater than the target profit; conversely, when final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. If the final negotiated cost exceeds the price ceiling, the contractor absorbs the difference as a loss. Because the profit varies inversely with the cost, this contract type provides a positive, calculable profit incentive for the contractor to control costs.

(b) *Application.* A fixed-price incentive (firm target) contract is appropriate when the parties can negotiate at the outset a firm target cost, target profit, and profit adjustment formula that will provide a fair and reasonable incentive and a ceiling that provides for the contractor to assume an appropriate share of the risk. When the contractor assumes a considerable or major share of the cost responsibility under the adjustment formula, the target profit should reflect this responsibility.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data to support negotiation of final cost and incentive price revision; and

(2) Adequate cost or pricing information for establishing reasonable firm targets is available at the time of initial contract negotiation.

(d) *Contract schedule.* The contracting officer shall specify in the contract schedule the target cost, target profit, and target price for each item subject to incentive price revision.

16.403-2 Fixed-price incentive (successive targets) contracts.

(a) *Description.* (1) A fixed-price incentive (successive targets) contract specifies the following elements, all of which are negotiated at the outset:

(i) An initial target cost.

(ii) An initial target profit.

(iii) An initial profit adjustment formula to be used for establishing the firm target profit, including a ceiling and floor for the firm target profit. (This formula normally provides for a lesser degree of contractor cost responsibility than would a formula for establishing final profit and price.)

(iv) The production point at which the firm target cost and firm target profit will be negotiated (usually before delivery or shop completion of the first item).

(v) A ceiling price that is the maximum that may be paid to the contractor, except for any adjustment under other contract clauses providing for equitable adjustment or other revision of the contract price under stated circumstances.

(2) When the production point specified in the contract is reached, the parties negotiate the firm target cost, giving consideration to cost experience under the contract and other pertinent factors. The firm target profit is established by the formula. At this point, the parties have two alternatives, as follows:

(i) They may negotiate a firm fixed price, using the firm target cost plus the firm target profit as a guide.

(ii) If negotiation of a firm fixed price is inappropriate, they may negotiate a formula for establishing the final price using the firm target cost and firm target profit. The final cost is then negotiated at completion, and the final profit is established by formula, as under the fixed-price incentive (firm target) contract (see 16.403-1 above).

(b) *Application.* A fixed-price incentive (successive targets) contract is appropriate when—

(1) Available cost or pricing information is not sufficient to permit the negotiation of a realistic firm target cost and profit before award;

(2) Sufficient information is available to permit negotiation of initial targets; and

(3) There is reasonable assurance that additional reliable information will be available at an early point in the contract performance so as to permit negotiation of either (i) a firm fixed price or (ii) firm targets and a formula for establishing final profit and price that will provide a fair and reasonable incentive. This additional information is not limited to experience under the contract, itself, but may be drawn from other contracts for the same or similar items.

(c) *Limitations.* This contract type may be used only when—

(1) The contractor's accounting system is adequate for providing data for negotiating firm targets and a realistic profit adjustment formula, as well as later negotiation of final costs; and

(2) Cost or pricing information adequate for establishing a reasonable firm target cost is reasonably expected to be available at an early point in contract performance.

(d) *Contract schedule.* The contracting officer shall specify in the contract schedule the initial target cost, initial target profit, and initial target price for each item subject to incentive price revision.

16.404 Fixed-price contracts with award fees.

(a) Award-fee provisions may be used in fixed-price contracts when the Government wishes to motivate a contractor

and other incentives cannot be used because contractor performance cannot be measured objectively. Such contracts shall—

(1) Establish a fixed price (including normal profit) for the effort. This price will be paid for satisfactory contract performance. Award fee earned (if any) will be paid in addition to that fixed price; and

(2) Provide for periodic evaluation of the contractor's performance against an award-fee plan.

(b) A solicitation contemplating award of a fixed-price contract with award fee shall not be issued unless the following conditions exist:

(1) The administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits;

(2) Procedures have been established for conducting the award-fee evaluation;

(3) The award-fee board has been established; and

(4) An individual above the level of the contracting officer approved the fixed-price-award-fee incentive.

16.405 Cost-reimbursement incentive contracts.

See 16.301 for requirements applicable to all cost-reimbursement contracts, for use in conjunction with the following subsections.

16.405-1 Cost-plus-incentive-fee contracts.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement contract that provides for the initially negotiated fee to be adjusted later by a formula based on the relationship of total allowable costs to total target costs. This contract type specifies a target cost, a target fee, minimum and maximum fees, and a fee adjustment formula. After contract performance, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. This increase or decrease is intended to provide an incentive for the contractor to manage the contract effectively. When total allowable cost is greater than or less than the range of costs within which the fee-adjustment formula operates, the contractor is paid total allowable costs, plus the minimum or maximum fee.

(b) *Application.* (1) A cost-plus-incentive-fee contract is appropriate for services or development and test programs when—

(i) A cost-reimbursement contract is necessary (see 16.301-2); and

(ii) A target cost and a fee adjustment formula can be negotiated that are likely to motivate the contractor to manage effectively.

(2) The contract may include technical performance incentives when it is highly probable that the required development of a major system is feasible and the Government has established its performance objectives, at least in general terms. This approach also may apply to other acquisitions, if the use of both cost and technical performance incentives is desirable and administratively practical.

(3) The fee adjustment formula should provide an incentive that will be effective over the full range of reasonably foreseeable variations from target cost. If a high maximum fee is negotiated, the contract shall also provide for a low minimum fee that may be a zero fee or, in rare cases, a negative fee.

(c) *Limitations.* No cost-plus-incentive-fee contract shall be awarded unless all limitations in 16.301-3 are complied with.

16.405-2 Cost-plus-award-fee contracts.

(a) *Description.* A cost-plus-award-fee contract is a cost-reimbursement contract that provides for a fee consisting of (1) a base amount fixed at inception of the contract and (2) an award amount that the contractor may earn in whole or in part during performance and that is sufficient to provide motivation for excellence in such areas as quality, timeliness, technical ingenuity, and cost-effective management. The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

(b) *Application.* (1) The cost-plus-award-fee contract is suitable for use when—

(i) The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, technical performance, or schedule;

(ii) The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved; and

(iii) Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits.

(2) The number of evaluation criteria and the requirements they represent will differ widely among contracts. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas.

(3) Cost-plus-award-fee contracts shall provide for evaluation at stated intervals during performance, so that the contractor will periodically be informed of the quality of its performance and the areas in which improvement is expected. Partial payment of fee shall generally correspond to the evaluation periods. This makes effective the incentive which the award fee can create by inducing the contractor to improve poor performance or to continue good performance.

(c) *Limitations.* No cost-plus-award-fee contract shall be awarded unless—

(1) All of the limitations in 16.301-3 are complied with; and

(2) The contract amount, performance period, and expected benefits are sufficient to warrant the additional administrative effort and cost involved.

16.406 Contract clauses.

(a) Insert the clause at 52.216-16, Incentive Price Revision—Firm Target, in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.216-17, Incentive Price Revision—Successive Targets, in solicitations and contracts when a fixed-price incentive (successive targets) contract is contemplated. If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to incentive price revision under the clause, the contracting officer shall use the clause with its Alternate I.

(c) The clause at 52.216-7, Allowable Cost and Payment, is prescribed in 16.307(a) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract or a cost-plus-award-fee contract is contemplated.

(d) The clause at 52.216-10, Incentive Fee, is prescribed in 16.307(d) for insertion in solicitations and contracts when a cost-plus-incentive-fee contract is contemplated.

(e) Insert an appropriate award-fee clause in solicitations and contracts when an award-fee contract is contemplated, provided that the clause—

(1) Is prescribed by or approved under agency acquisition regulations;

(2) Is compatible with the clause at 52.216-7, Allowable Cost and Payment; and

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

Subpart 16.5—Indefinite-Delivery Contracts

16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by Part 6.

(c) The multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in Subpart 36.6. However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with Subpart 36.6.

16.501-1 Definitions.

As used in this subpart—

“Delivery order contract” means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

“Task order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

16.501-2 General.

(a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Requirements contracts and indefinite-quantity contracts are also known as delivery order contracts or task order contracts.

(b) The various types of indefinite-delivery contracts offer the following advantages:

(1) All three types permit—

(i) Government stocks to be maintained at minimum levels; and

(ii) Direct shipment to users.

(2) Indefinite-quantity contracts and requirements contracts also permit—

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of supplies or services after requirements materialize.

(3) Indefinite-quantity contracts limit the Government’s obligation to the minimum quantity specified in the contract.

(4) Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under Part 16. Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.*, estimated number of labor hours) must comply with the appropriate procedures of this subpart.

16.502 Definite-quantity contracts.

(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(b) *Application.* A definite-quantity contract may be used when it can be determined in advance that—

(1) A definite quantity of supplies or services will be required during the contract period; and

(2) The supplies or services are regularly available or will be available after a short lead time.

16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled by placing orders with the contractor.

(1) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(2) The contract shall state, if feasible, the maximum limit of the contractor’s obligation to deliver and the Government’s obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) *Application.* A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as “estimated” or “maximum” will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

(d) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and \$10,000,000 (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in 16.504.

(2) The limitation in paragraph (d)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see 16.505(b)(1));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see 16.505(b)(5)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference—(1) Planning the acquisition.* (i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the con-

tracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see Subpart 1.7).

(2) *Contracts for advisory and assistance services.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$10 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

16.505 Ordering.

(a) *General.* (1) The contracting officer does not synopsise orders under indefinite-delivery contracts.

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) Performance-based work statements must be used to the maximum extent practicable, if the contract or order is for services (see 37.102(a)).

(4) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see 39.103(a)).

(5) Orders may be placed by using any medium specified in the contract.

(6) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see 32.1110(e)).

(7) Orders placed under a task-order contract or delivery-order contract awarded by another agency (*i.e.*, a Governmentwide acquisition contract, or multi-agency contract)—

(i) Are not exempt from the development of acquisition plans (see Subpart 7.1), and an information technology acquisition strategy (see Part 39); and

(ii) May not be used to circumvent conditions and limitations imposed on the use of funds (*e.g.*, 31 U.S.C. 1501(a)(1)).

(8) No protest under Subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for a protest on the grounds that the order increases the scope, period, or maximum value of the contract.

(b) *Orders under multiple award contracts*—(1) *Fair opportunity.* (i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$2,500 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in Part 6 and the policies in Subpart 15.3 do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) The contracting officer should consider the following when developing the procedures:

(A) (1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

(4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(i) Seeking comments from two or more contractors on draft statements of work;

(ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to

submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.* The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$2,500 unless one of the following statutory exceptions applies:

(i) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(ii) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(iii) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in Subpart 15.4.

(4) *Decision documentation for orders.* The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision. The contract file shall also identify the basis for using an exception to the fair opportunity process. If the agency uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official

designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

16.506 Solicitation provisions and contract clauses.

(a) Insert the clause at 52.216-18, Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at 52.216-19, Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at 52.216-20, Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at 52.216-21, Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

(e) Insert the clause at 52.216-22, Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at 52.216-27, Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$10 million (including all options).

(g) Insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$10 million (including all options), unless a determination has been made under 16.504(c)(2)(i)(A). Modify the provision to specify the estimated number of awards.

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

16.601 Time-and-materials contracts.

(a) *Description.* A time-and-materials contract provides for acquiring supplies or services on the basis of—

(1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and

(2) Materials at cost, including, if appropriate, material handling costs as part of material costs.

(b) *Application.* A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

(1) *Government surveillance.* A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.

(2) *Material handling costs.* When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.

(3) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—

(i) The total estimated contract price does not exceed \$25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;

(ii) The material to be so charged is identified in the contract;

(iii) No element of profit on material so charged is included as profit in the fixed hourly labor rates; and

(iv) The contract provides—

(A) That the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Government; and

(B) That in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.

(c) *Limitations.* A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable; and (2) only if the contract includes a ceiling price that the con-

tractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

16.602 Labor-hour contracts.

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

16.603 Letter contracts.

16.603-1 Description.

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

16.603-2 Application.

(a) A letter contract may be used when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.

(b) When a letter contract award is based on price competition, the contracting officer shall include an overall price ceiling in the letter contract.

(c) Each letter contract shall, as required by the clause at 52.216-25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31, subject to appeal as provided in the Disputes clause.

(d) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the

definitive contract unless approved in advance by the official that authorized the letter contract.

(e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under 11.604.

16.603-3 Limitations.

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

(a) Commit the Government to a definitive contract in excess of the funds available at the time the letter contract is executed;

(b) Be entered into without competition when competition is required by Part 6; or

(c) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.603-4 Contract clauses.

(a) The contracting officer shall include in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.

(b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:

(1) The clause at 52.216-23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26;

(2) The clause at 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with 16.603-2(d); and

(3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If, at the time of entering into the letter contract, the contracting officer knows that the definitive contract will be based on adequate price competition or will otherwise meet the criteria of 15.403-1 for not requiring submission of cost or pricing data, the words “and cost or pricing data supporting its proposal” may be deleted from paragraph (a) of the clause. If the letter contract is being awarded on the basis of price competition, the contracting officer shall use the clause with its Alternate I.

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

Subpart 16.7—Agreements

16.701 Scope.

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

16.702 Basic agreements.

(a) *Description.* A basic agreement is a written instrument of understanding, negotiated between GPO and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its term and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.

(b) *Application.* A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.

(1) Basic agreements shall contain—

- (i) Clauses required for negotiated contracts by statute, executive order, and this regulation; and
- (ii) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.

(2) Each basic agreement shall provide for discontinuing its future applicability upon 30 days' written notice by either party.

(3) Each basic agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

(4) Discontinuing or modifying a basic agreement shall not affect any prior contract incorporating the basic agreement.

(5) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.

(c) *Limitations.* A basic agreement shall not—

- (1) Cite appropriations or obligate funds;
- (2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or
- (3) Be used in any manner to restrict competition.

(d) *Contracts incorporating basic agreements.* (1) Each contract incorporating a basic agreement shall include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract. The basic agreement shall be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.

(2) The contracting officer shall include clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, in the same manner as if there were no basic agreement.

(3) If an existing contract is modified to effect new acquisition, the modification shall incorporate the most recent basic agreement, which shall apply only to work added by the modification, except that this action is not mandatory if the contract or modification includes all clauses required by statute, executive order, and this regulation as of the date of the modification. However, if it is in the Government's interest and the contractor agrees, the modification may incorporate the most recent basic agreement for application to the entire contract as of the date of the modification.

16.703 Basic ordering agreements.

(a) *Description.* A basic ordering agreement is a written instrument of understanding, negotiated between GPO and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.

(b) *Application.* A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of supplies or services covered by the agreement are anticipated to be purchased from the contractor. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.

(c) *Limitations.* A basic ordering agreement shall not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition.

(1) Each basic ordering agreement shall—

- (i) Describe the method for determining prices to be paid to the contractor for the supplies or services;
- (ii) Include delivery terms and conditions or specify how they will be determined;
- (iii) List one or more Government activities authorized to issue orders under the agreement;

(iv) Specify the point at which each order becomes a binding contract (*e.g.*, issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);

(v) Provide that failure to reach agreement on price for any order issued before its price is established (see paragraph (d)(3) of this section) is a dispute under the Disputes clause included in the basic ordering agreement; and

(vi) If fast payment procedures will apply to orders, include the special data required by 13.403.

(2) Each basic ordering agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic ordering agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic ordering agreement shall be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement shall not retroactively affect orders previously issued under it.

(d) *Orders.* A contracting officer representing any Government activity listed in a basic ordering agreement may issue orders for required supplies or services covered by that agreement.

(1) Before issuing an order under a basic ordering agreement, the contracting officer shall—

(i) Obtain competition in accordance with Part 6;

(ii) If the order is being placed after competition, ensure that use of the basic ordering agreement is not prejudicial to other offerors; and

(iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, and comply with other requirements in accordance with 1.602-1(b), as if the order were a contract awarded independently of a basic ordering agreement.

(2) Contracting officers shall—

(i) Issue orders under basic ordering agreements on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument;

(ii) Incorporate by reference the provisions of the basic ordering agreement;

(iii) If applicable, cite the authority under 6.302 in each order; and

(iv) Comply with 5.203 when synopsis is required by 5.201.

(3) The contracting officer shall neither make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a ceiling price limiting the Government's obligation and either—

(i) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or

(ii) The need for the supplies or services is compelling and unusually urgent (*i.e.*, when the Government would be seriously injured, financially or otherwise, if the requirement is not met sooner than would be possible if prices were established before the work began). The contracting officer shall proceed with pricing as soon as practical. In no event shall an entire order be priced retroactively.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

Sec.

17.000 Scope of part.

Subpart 17.1—Multi-year Contracting

17.101 Authority.

17.102 [Reserved]

17.103 Definitions.

17.104 General.

17.105 Policy.

17.105-1 Uses.

17.105-2 Objectives.

17.106 Procedures.

17.106-1 General.

17.106-2 Solicitations.

17.106-3 [Reserved]

17.107 Options.

17.108 [Reserved]

17.109 Contract clauses.

Subpart 17.2—Options

17.200 Scope of subpart.

17.201 [Reserved]

17.202 Use of options.

17.203 Solicitations.

17.204 Contracts.

17.205 Documentation.

17.206 Evaluation.

17.207 Exercise of options.

17.208 Solicitation provisions and contract clauses.

Subpart 17.3—[Reserved]

Subpart 17.4—[Reserved]

Subpart 17.5—Interagency Acquisitions Under the Economy Act

17.500 Scope of subpart.

17.501 Definition.

17.502 General.

17.503 Determinations and findings requirements.

17.504 Ordering procedures.

17.505 Payment.

17.506 JCP Advance Approval Requirement

Subpart 17.6—[Reserved]

This page intentionally left blank.

17.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

- (a) Multi-year contracting;
- (b) Options; and
- (c) Leader company contracting.

Subpart 17.1—Multi-year Contracting**17.101 Authority.**

This subpart provides policy and procedures for the use of multi-year contracting.

17.102 [Reserved]**17.103 Definitions.**

As used in this subpart—

“Cancellation” means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

- (1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or
- (2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

“Cancellation ceiling” means the maximum cancellation charge that the contractor can receive in the event of cancellation.

“Cancellation charge” means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

“Multi-year contract” means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts, defined in the statutes cited at 17.101, buy more than 1 year’s requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

“Nonrecurring costs” means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

“Recurring costs” means costs that vary with the quantity being produced, such as labor and materials.

17.104 General.

(a) Multi-year contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multi-year contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the unique circumstances of each contract. Accordingly, for multi-year contracts, the agency head may authorize modification of the requirements of this subpart and the clause at 52.217-2, Cancellation Under Multi-year Contracts.

(c) The funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years’ quantities).

17.105 Policy.**17.105-1 Uses.**

(a) The contracting officer may enter into a multi-year contract if the head of the contracting activity determines that—

- (1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and
- (2) A multi-year contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency’s programs.

17.105-2 Objectives.

Use of multi-year contracting is encouraged to take advantage of one or more of the following:

- (a) Lower costs.
- (b) Enhancement of standardization.
- (c) Reduction of administrative burden in the placement and administration of contracts.
- (d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.
- (e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

17.106 Procedures.

17.106-1 General.

(a) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multi-year procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(b) *Type of contract.* Given the longer performance period associated with multi-year acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.408, Table 15-2, Formats for Submission of Line Items Summaries C(8)) are estimated at 10 percent of the total multi-year price, and the percentages for each of the program year requirements for 5 years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi-year requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for

the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges.* If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multi-year contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

17.106-2 Solicitations.

Solicitations for multi-year contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multi-year contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multi-year requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee shall consider only the first year.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106-1(c) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) The Government's administrative costs of annual contracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

17.106-3 [Reserved]

17.107 Options.

Benefits may accrue by including options in a multi-year contract. In that event, contracting officers must follow the requirements of Subpart 17.2. Options should not include charges for plant and equipment already amortized, or other

nonrecurring charges which were included in the basic contract.

17.108 [Reserved]

17.109 Contract clauses.

(a) The contracting officer shall insert the clause at 52.217-2, Cancellation Under Multi-year Contracts, in solicitations and contracts when a multi-year contract is contemplated.

(b) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multi-year contracting needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see 16.203). When contracting for services, the contracting officer—

(1) Shall add the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Act of 1965, as amended;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by 16.203, when potential fluctuations require coverage and are not included in cost contingencies provided for by the clause at 52.222-43.

Subpart 17.2—Options

17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

17.201 [Reserved]

17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation, the contracting officer may include options in contracts when it is in the Government's interest. When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at 52.217-5, Evaluation of Options, in the solicitation. (See 17.207(f) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (*i.e.*, quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(c) The contracting officer shall not employ options if—

(1) The contractor will incur undue risks; *e.g.*, the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the supplies or services involved are likely to change substantially; or

(3) The option represents known firm requirements for which funds are available unless—

(i) The basic quantity is a learning or testing quantity; and

(ii) Competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of—

(1) The Government's need in certain service contracts for continuity of operations; and

(2) The potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

17.203 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 17.208).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see 17.206).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) of this section applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; *e.g.*, when—

(1) The option cannot be evaluated under 17.206; or;

(2) Future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

17.204 Contracts.

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period may extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Act (see 22.1002-1), may place additional restrictions on the length of contracts.

(f) Contracts may express options for increased quantities of supplies or services in terms of—

- (1) Percentage of specific line items,
- (2) Increase in specific line items; or
- (3) Additional numbered line items identified as the option.

(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; *e.g.*, days, weeks, or months.

17.205 Documentation.

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by Part 6 shall specify both the basic requirement and the increase permitted by the option.

17.206 Evaluation.

(a) In awarding the basic contract, the contracting officer shall, except as provided in paragraph (b) of this section, evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See 17.208.)

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.

17.207 Exercise of options.

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) The contracting officer may exercise options only after determining that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing Government need;
- (3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered; and
- (4) The option was synopsisized in accordance with Part 5 unless exempted by 5.202(a)(11) or other appropriate exemptions in 5.202.

(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under (c)(3) of this section should take into account the Government's need for continuity of operations and potential costs of disrupting operations.

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and Part 6. To satisfy requirements of Part 6 regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.*—

- (1) A specific dollar amount;

(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;

(3) In the case of a cost-type contract, if—

(i) The option contains a fixed or maximum fee; or

(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));

(4) A specific price that is subject to an economic price adjustment provision; or

(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.

(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.

17.208 Solicitation provisions and contract clauses.

(a) Insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when the solicitation includes an option clause, the contracting officer has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.

(c) Insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when—

(1) The solicitation contains an option clause;

(2) An option is not to be exercised at the time of contract award;

(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated; and

(4) The contracting officer has determined that there is a reasonable likelihood that the option will be exercised. For sealed bids, the determination shall be in writing.

(d) Insert a clause substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is expressed as a percentage of the basic contract quantity or as an additional quantity of a specific line item.

(e) Insert a clause substantially the same as the clause at 52.217-7, Option for Increased Quantity—Separately Priced Line Item, in solicitations and contracts, other than those for services, when the inclusion of an option is appropriate (see 17.200 and 17.202) and the option quantity is identified as a separately priced line item having the same nomenclature as a corresponding basic contract line item.

(f) Insert a clause substantially the same as the clause at 52.217-8, Option to Extend Services, in solicitations and contracts for services when the inclusion of an option is appropriate. (See 17.200, 17.202, and 37.111.)

(g) Insert a clause substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government must give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the option.

(3) A specified limitation on the total duration of the contract.

Subpart 17.3—[Reserved]

Subpart 17.4—[Reserved]

Subpart 17.5—Interagency Acquisitions Under the Economy Act

17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to interagency acquisitions under the Economy Act (31 U.S.C. 1535). The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of interagency acquisitions to which the Economy Act does not apply include—

(1) Acquisitions from required or optional sources of supplies prescribed in Part 8, which have separate statutory authority (*e.g.*, Federal Supply Schedule contracts); and

(2) Acquisitions using Governmentwide acquisition contracts.

17.501 Definition.

“Interagency acquisition,” as used in this subpart, means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency).

17.502 General.

(a) The Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition.

(b) The Economy Act may not be used by an agency to circumvent conditions and limitations imposed on the use of funds.

(c) Acquisitions under the Economy Act are not exempt from the requirements of Subpart 7.3, Contractor Versus Government Performance.

(d) The Economy Act may not be used to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under the Federal Property and Administrative Services Act).

17.503 Determinations and findings requirements.

(a) Each Economy Act order shall be supported by a Determination and Finding (D&F). The D&F shall state that—

(1) Use of an interagency acquisition is in the best interest of the Government; and

(2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

(b) If the Economy Act order requires contract action by the servicing agency, the D&F must also include a statement that at least one of the following circumstances applies:

(1) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services;

(2) The servicing agency has capabilities or expertise to enter into a contract for such supplies or services which is not available within the requesting agency; or

(3) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(c) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head.

17.504 Ordering procedures.

(a) Before placing an Economy Act order for supplies or services with another Government agency, the requesting agency shall make the D&F required in 17.503. The servicing agency may require a copy of the D&F to be furnished with the order.

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.505); and

(5) Acquisition authority as may be appropriate (see 17.504(d)).

(c) The requesting and servicing agencies should agree to procedures for the resolution of disagreements that may arise under interagency acquisitions, including, in appropriate circumstances, the use of a third-party forum. If a third party is proposed, consent of the third party should be obtained in writing.

(d) When an interagency acquisition requires the servicing agency to award a contract, the following procedures also apply:

(1) If a justification and approval or a D&F (other than the requesting agency's D&F required in 17.503) is required by law or regulation, the servicing agency shall execute and issue the justification and approval or D&F. The requesting agency shall furnish the servicing agency any information needed to make the justification and approval or D&F.

(2) The requesting agency shall also be responsible for furnishing other assistance that may be necessary, such as providing information or special contract terms needed to comply with any condition or limitation applicable to the funds of the requesting agency.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements applicable to the contract, including (i) having adequate statutory authority for the contractual action, and (ii) complying fully with the

competition requirements of Part 6 (see 6.002). However, if the servicing agency is not subject to the Federal Acquisition Regulation, the requesting agency shall verify that contracts utilized to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions mandated for MMAR agencies by Part 31), and that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement permit work from other than a sponsoring agency. Work placed with the FFRDC is subject to the acceptance by the sponsor and must fall within the purpose, mission, general scope of effort, or special competency of the FFRDC. (See 35.017; see also 6.302 for procedures to follow where using other than full and open competition.) The nonsponsoring agency shall provide to the sponsoring agency necessary documentation that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.505 Payment.

(a) The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.

(b) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(c) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(d) If the Economy Act order requires use of a contract by the servicing agency, then in no event shall the servicing agency require, or the requiring agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

17.506 JCP Advance Approval Requirement

Any interagency agreement where the cost exceeds \$20,000 annually requires written approval of the Joint Committee on Printing (JCP). See 4.104.

Subpart 17.6—[Reserved]

* * * * *

MATERIALS MANAGEMENT ACQUISITION REGULATION

PART 18—RESERVED

This page intentionally left blank.

**MATERIALS MANAGEMENT
ACQUISITION REGULATION**

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 19—SMALL BUSINESS PROGRAMS

Sec.

19.000	Scope of part.	Subpart 19.3—[Reserved]
19.001	Definitions.	Subpart 19.4—[Reserved]
	Subpart 19.1—Size Standards	Subpart 19.5—[Reserved]
19.101	Explanation of terms.	Subpart 19.6—[Reserved]
19.102	Size standards.	Subpart 19.7—[Reserved]
	Subpart 19.2—Policies	Subpart 19.8—[Reserved]
19.201	General policy.	Subpart 19.9—[Reserved]
19.202	Specific policies.	Subpart 19.10—[Reserved]
19.202-1	Encouraging small business participation in acquisitions.	Subpart 19.11—[Reserved]
19.202-2	Locating small business sources.	Subpart 19.12—[Reserved]
19.202-3	Equal low bids.	Subpart 19.13—[Reserved]
19.202-4	Solicitation.	
19.202-5	Data collection and reporting requirements.	
19.202-6	[Reserved]	

19.000 Scope of part.

(a) This part implements the MMS acquisition-related policies regarding small businesses.

19.001 Definitions.

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States and which makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see 19.101) any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States, shall be included.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see 19.202-6).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>).

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

“Very small business concern” means a small business concern—

(1) Whose headquarters is located within the geographic area served by a designated SBA district; and

(2) Which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

Subpart 19.1—Size Standards**19.101 Explanation of terms.**

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located inside the United States.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns, controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern’s voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their

efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *Joint venture—acquisition and property sale assistance.* Concerns bidding on a particular acquisition or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is limited to particular contracts unless the SBA size determination finds general affiliation between the parties.

(iii) Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(iv) *Franchise and license agreements.* If a concern operates or is to operate under a franchise (or a license) agreement, the following policy is applicable: In determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, the restraints imposed on a franchisee by its franchise agreement shall not be considered, provided that the franchisee has the right to profit from its effort and the risk of loss or failure, commensurate with ownership. Even though a franchisee may not be controlled by the franchisor by virtue of the contractual relationship between them, the franchisee may be controlled by the franchisor or others through common ownership or common management, in which case they would be considered as affiliated.

(v) *Size determination for teaming arrangements.* For size determination purposes, apply the size standard tests in paragraphs (7)(i)(A) and (B) of this section when a teaming arrangement of two or more business concerns submits an offer, as appropriate.

“Annual receipts.” (1) Annual receipts of a concern which has been in business for 3 or more complete fiscal years means the annual average gross revenue of the concern taken for the last 3 fiscal years. For the purpose of this definition, gross revenue of the concern includes revenues from sales of products and services, interest, rents, fees, commissions and/or whatever other sources derived, but less returns and allowances, sales of fixed assets, interaffiliate transactions between a concern and its domestic and foreign affiliates, and taxes collected for remittance (and if due, remitted) to a third party. Such revenues shall be measured as entered on the regular books of account of the concern whether on a cash, accrual, or other basis of accounting acceptable to the U.S. Treasury Department for the purpose of supporting Federal income tax returns, except when a change in accounting method from cash to accrual or accrual to cash has taken place during such 3-year period, or when the completed contract method has been used.

(i) In any case of change in accounting method from cash to accrual or accrual to cash, revenues for such 3-year period shall, prior to the calculation of the annual average, be restated to the accrual method. In any case, where the completed contract method has been used to account for revenues in such 3-year period, revenues must be restated on an accrual basis using the percentage of completion method.

(ii) In the case of a concern which does not keep regular books of accounts, but which is subject to U.S. Federal income taxation, “annual receipts” shall be measured as reported, or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes, except that any return based on a change in accounting method or on the completed contract method of accounting must be restated as provided for in the preceding paragraphs.

(2) Annual receipts of a concern that has been in business for less than 3 complete fiscal years means its total receipts for the period it has been in business, divided by the number of weeks including fractions of a week that it has been in business, and multiplied by 52. In calculating total receipts, the definitions and adjustments related to a change of accounting method and the completed contract method of paragraph (1) of this definition, are applicable.

“Number of employees” is a measure of the average employment of a business concern and means its average employment, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during each of the pay periods of the preceding 12 months. If a business has not been in existence for 12 months, “number of employees” means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the

pay periods of the period that such concern has been in business. If a business has acquired an affiliate during the applicable 12-month period, it is necessary, in computing the applicant's number of employees, to include the affiliate's number of employees during the entire period, rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included, even if such concern had been an affiliate during a portion of the period.

19.102 Size standards.

(a) The SBA establishes small business size standards on an industry-by-industry basis. (See 13 CFR part 121.)

(b) Small business size standards are applied by—

(1) Classifying the product or service being acquired in the industry whose definition, as found in the North American Industry Classification System (NAICS) Manual (available via the Internet at <http://www.census.gov/epcd/www/naics.html>), best describes the principal nature of the product or service being acquired;

(2) Identifying the size standard SBA established for that industry; and

(3) Specifying the size standard in the solicitation so that offerors can appropriately represent themselves as small or large.

(c) For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one.

(d) When acquiring a product or service that could be classified in two or more industries with different size standards, contracting officers shall apply the size standard for the industry accounting for the greatest percentage of the contract price.

(e) If a solicitation calls for more than one item and allows offers to be submitted on any or all of the items, an offeror must meet the size standard for each item it offers to furnish. If a solicitation calling for more than one item requires offers on all or none of the items, an offeror may qualify as a small business by meeting the size standard for the item accounting for the greatest percentage of the total contract price.

(f) Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees.

(g) The industry size standards are published by the Small Business Administration and are available via the Internet at <http://www.sba.gov/size>.

Subpart 19.2—Policies

19.201 General policy.

(a) It is the policy of the GPO to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded, consistent with efficient contract performance.

(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed in this section.

19.202-1 Encouraging small business participation in acquisitions.

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(c) Encourage prime contractors to subcontract with small business concerns (see Subpart 19.7).

19.202-2 Locating small business sources.

The contracting officer must, to the extent practicable, encourage maximum participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Include on mailing lists all established and potential small business sources, including those located in labor surplus areas and HUBZones, if the concerns have submitted

acceptable applications or appear from other representations to be qualified small business concerns.

(b) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless lists are already excessively long and only some of the concerns on the list will be solicited.

(c) Publicize solicitations and contract awards through the Governmentwide point of entry (see Subparts 5.2 and 5.3).

19.202-3 Equal low bids.

In the event of equal low bids (see 14.408-6), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

19.202-4 Solicitation.

The contracting officer must encourage maximum response to solicitations by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Send solicitations to—

(1) A pro rata number of small business concerns when less than a complete list is used.

(d) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any contract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

19.202-5 Data collection and reporting requirements.

MMS shall:

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern (see the provision at 52.219-1, Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small busi-

ness concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year.

Subpart 19.3—Reserved

Subpart 19.4—[Reserved]

SUBPART 19.5—[RESERVED]

Subpart 19.5—[Reserved]

Subpart 19.6—[Reserved]

Subpart 19.7—[Reserved]

FAC 2001-01 CORRECTION JANUARY 14, 2002

MATERIALS MANAGEMENT ACQUISITION REGULATION

Subpart 19.8—[Reserved]

SUBPART 19.9—[RESERVED]

Subpart 19.9—[Reserved]

SUBPART 19.10—[RESERVED]

Subpart 19.10—[Reserved]

Subpart 19.11—[Reserved]

Subpart 19.12—[Reserved]

SUBPART 19.13—[RESERVED]

Subpart 19.13—[Reserved]

MATERIALS MANAGEMENT ACQUISITION REGULATION

PART 20—RESERVED

This page intentionally left blank.

MATERIALS MANAGEMENT ACQUISITION REGULATION

PART 21—RESERVED

This page intentionally left blank.

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Sec.

22.000	Scope of part.	22.404-8	Notification of improper wage determination before award.
22.001	Definition.	22.404-9	Award of contract without required wage determination.
	Subpart 22.1—Basic Labor Policies	22.404-10	Posting wage determinations and notice.
22.101	Labor relations.	22.404-11	Wage determination appeals.
22.101-1	General.	22.404-12	Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.
22.101-2	Contract pricing and administration.	22.405	Labor standards for construction work performed under facilities contracts.
22.101-3	Reporting labor disputes.	22.406	Administration and enforcement.
22.101-4	Removal of items from contractors' facilities affected by work stoppages.	22.406-1	Policy.
22.102	Federal and State labor requirements.	22.406-2	Wages, fringe benefits, and overtime.
22.102-1	Policy.	22.406-3	Additional classifications.
22.102-2	Administration.	22.406-4	Apprentices and trainees.
22.103	Overtime.	22.406-5	Subcontracts.
22.103-1	Definition.	22.406-6	Payrolls and statements.
22.103-2	Policy.	22.406-7	Compliance checking.
22.103-3	Procedures.	22.406-8	Investigations.
22.103-4	Approvals.	22.406-9	Withholding from or suspension of contract payments.
22.103-5	Contract clauses.	22.406-10	Disposition of disputes concerning construction contract labor standards enforcement.
	Subpart 22.2—Convict Labor	22.406-11	Contract terminations.
22.201	General.	22.406-12	Cooperation with the Department of Labor.
22.202	Contract clause.	22.406-13	Semiannual enforcement reports.
	Subpart 22.3—Contract Work Hours and Safety Standards Act	22.407	Contract clauses.
22.300	Scope of subpart.		Subpart 22.5—[Reserved]
22.301	Statutory requirement.		Subpart 22.6—Walsh-Healey Public Contracts Act
22.302	Liquidated damages and overtime pay.	22.601	[Reserved]
22.303	Administration and enforcement.	22.602	Statutory requirements.
22.304	Variations, tolerances, and exemptions.	22.603	Applicability.
22.305	Contract clause.	22.604	Exemptions.
	Subpart 22.4—Labor Standards for Contracts Involving Construction	22.604-1	Statutory exemptions.
22.400	Scope of subpart.	22.604-2	Regulatory exemptions.
22.401	Definitions.	22.605	Rulings and interpretations of the Act.
22.402	Applicability.	22.606	[Reserved]
22.403	Statutory and regulatory requirements.	22.607	[Reserved]
22.403-1	Davis-Bacon Act.	22.608	Procedures.
22.403-2	Copeland Act.	22.609	Regional jurisdictions of the Department of Labor, Wage and Hour Division.
22.403-3	Contract Work Hours and Safety Standards Act.	22.610	Contract clause.
22.403-4	Department of Labor regulations.		Subpart 22.7—[Reserved]
22.404	Davis-Bacon Act wage determinations.		Subpart 22.8—Equal Employment Opportunity
22.404-1	Types of wage determinations.	22.800	Scope of subpart.
22.404-2	General requirements.	22.801	Definitions.
22.404-3	Procedures for requesting wage determinations.	22.802	General.
22.404-4	Solicitations issued without wage determinations.		
22.404-5	Expiration of project wage determinations.		
22.404-6	Modifications of wage determinations.		
22.404-7	Correction of wage determinations containing clerical errors.		

- 22.803 Responsibilities.
- 22.804 Affirmative action programs.
- 22.804-1 Nonconstruction.
- 22.804-2 Construction.
- 22.805 [Reserved]
- 22.806 Inquiries.
- 22.807 Exemptions.
- 22.808 Complaints.
- 22.809 Enforcement.
- 22.810 Solicitation provisions and contract clauses.

Subpart 22.9—Nondiscrimination Because of Age

- 22.901 Policy.
- 22.902 Handling complaints.

Subpart 22.10—Service Contract Act of 1965, as Amended

- 22.1000 Scope of subpart.
- 22.1001 Definitions.
- 22.1002 Statutory requirements.
- 22.1002-1 General.
- 22.1002-2 Wage determinations based on prevailing rates.
- 22.1002-3 Wage determinations based on collective bargaining agreements.
- 22.1002-4 Application of the Fair Labor Standards Act minimum wage.
- 22.1003 Applicability.
- 22.1003-1 General.
- 22.1003-2 Geographical coverage of the Act.
- 22.1003-3 Statutory exemptions.
- 22.1003-4 Administrative limitations, variations, tolerances, and exemptions.
- 22.1003-5 Some examples of contracts covered.
- 22.1003-6 Repair distinguished from remanufacturing of equipment.
- 22.1003-7 Questions concerning applicability of the Act.
- 22.1004 Department of Labor responsibilities and regulations.
- 22.1005 [Reserved]
- 22.1006 Contract clauses.
- 22.1007 Requirement to submit Notice (SF 98/98a).
- 22.1008 Procedures for preparing and submitting Notice (SF 98/98a).
- 22.1008-1 Preparation of Notice (SF 98/98a).
- 22.1008-2 Preparation of SF 98a.
- 22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.
- 22.1008-4 Procedures when place of performance is unknown.
- 22.1008-5 Multiple-year contracts.
- 22.1008-6 Contract modifications (options, extensions, changes in scope) and anniversary dates.
- 22.1008-7 Required time of submission of Notice.

- 22.1009 Place of performance unknown.
- 22.1009-1 General.
- 22.1009-2 Attempt to identify possible places of performance.
- 22.1009-3 All possible places of performance identified.
- 22.1009-4 All possible places of performance not identified.
- 22.1010 Notification to interested parties under collective bargaining agreements.
- 22.1011 Response to Notice by Department of Labor.
- 22.1011-1 Department of Labor action.
- 22.1011-2 Requests for status or expediting of response.
- 22.1012 Late receipt or nonreceipt of wage determination.
- 22.1012-1 General.
- 22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.
- 22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.
- 22.1012-4 Response to late submission of Notice—no collective bargaining agreement.
- 22.1012-5 Response to late submission of Notice—with collective bargaining agreement.
- 22.1013 Review of wage determination.
- 22.1014 Delay of acquisition dates over 60 days.
- 22.1015 Discovery of errors by the Department of Labor.
- 22.1016 Statement of equivalent rates for Federal hires.
- 22.1017 Notice of award.
- 22.1018 Notification to contractors and employees.
- 22.1019 Additional classes of service employees.
- 22.1020 Seniority lists.
- 22.1021 Request for hearing.
- 22.1022 Withholding of contract payments.
- 22.1023 Termination for default.
- 22.1024 Cooperation with the Department of Labor.
- 22.1025 Ineligibility of violators.
- 22.1026 Disputes concerning labor standards.

Subpart 22.11—Professional Employee Compensation

- 22.1101 Applicability.
- 22.1102 Definition.
- 22.1103 Policy, procedures, and solicitation provision.

Subpart 22.12—[Reserved]

Subpart 22.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

- 22.1300 Scope of subpart.
- 22.1301 Definition.
- 22.1302 Policy.
- 22.1303 Applicability.
- 22.1304 Procedures.
- 22.1305 Waivers.
- 22.1306 Department of Labor notices and reports.

FAC 2001-01 DECEMBER 21, 2001

FEDERAL ACQUISITION REGULATION

- 22.1307 Collective bargaining agreements.
- 22.1308 Complaint procedures.
- 22.1309 Actions because of noncompliance.
- 22.1310 Solicitation provision and contract clauses.

Subpart 22.14—Employment of Workers with Disabilities

- 22.1400 [Reserved]
- 22.1401 Policy.
- 22.1402 Applicability.
- 22.1403 Waivers.
- 22.1404 Department of Labor notices.
- 22.1405 Collective bargaining agreements.
- 22.1406 [Reserved]

- 22.1407 Actions because of noncompliance.
- 22.1408 Contract clause.

Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

- 22.1500 Scope.
- 22.1501 Definitions.
- 22.1502 Policy.
- 22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.
- 22.1504 Violations and remedies.
- 22.1505 Solicitation provision and contract clause.

This page intentionally left blank.

22.000 Scope of part.

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

22.001 Definition.

“Administrator” or “Administrator, Wage and Hour Division,” as used in this part, means the—

Administrator
Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

or an authorized representative.

Subpart 22.1—Basic Labor Policies**22.101 Labor relations.****22.101-1 General.**

(a) MMS shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b)(1) MMS shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, MMS should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see 36.202(d).

(c) MMS should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) MMS should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute's potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see 22.103-5(a)).

22.101-2 Contract pricing and administration.

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see 31.205-6(c).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

(2) Using other available Government procedures; and

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (*e.g.*, “fixed costs” such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of

only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

22.101-3 Reporting labor disputes.

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at 52.222-1, Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

22.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

22.102 Federal and State labor requirements.

22.102-1 Policy.

MMS shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

- (a) Safety;
- (b) Health and sanitation;
- (c) Maximum hours and minimum wages;
- (d) Equal employment opportunity;
- (e) Child and convict labor;
- (f) Age discrimination;
- (g) Disabled and Vietnam veteran employment; and
- (h) Employment of the handicapped.

22.102-2 Administration.

(a) MMS shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act.

22.103 Overtime.

22.103-1 Definition.

"Normal workweek," as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours shall be considered normal if—

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

22.103-2 Policy.

Contractors shall perform all contracts, so far as practicable, without using overtime, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved overtime, extra-pay shifts, and multishifts should be scheduled to achieve these objectives.

22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to—

(1) Ascertain the extent that offers are based on the payment of overtime and shift premiums; and

(2) Negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see 22.103-5(b)) that overtime will be required in contract performance, the contracting officer shall

secure from the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request shall contain the information required by paragraph (b) of the clause at 52.222-2, Payment for Overtime Premiums.

22.103-4 Approvals.

(a) The contracting officer shall review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

- (1) Meet essential delivery or performance schedules;
- (2) Make up for delays beyond the control and without the fault or negligence of the contractor; or
- (3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums. This clause is to be inserted in cost-reimbursement contracts over \$100,000, except for those exempted under 22.103-5(b).

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(3) of the clause at 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see 22.103-4(a)) may be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, contractor requests for overtime exceeding the amount authorized by paragraph (a) of the clause at 52.222-2, Payment for Overtime Premiums, shall be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review

the request and if it approves, send the request to the contracting officer. If the contracting officer determines that the requested overtime should be approved in whole or in part, the contracting officer shall request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in Part 31. Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

22.103-5 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-1, Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e).

(b) The contracting officer shall include the clause at 52.222-2, Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to be over \$100,000; unless—

- (1) A cost-reimbursement contract for operation of vessels is contemplated; or
- (2) A cost-plus- incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

Subpart 22.2—Convict Labor

22.201 General.

(a) Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, states: “The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.” The Executive order does not prohibit the contractor, in performing the contract, from employing—

- (1) Persons on parole or probation;
- (2) Persons who have been pardoned or who have served their terms;
- (3) Federal prisoners; or
- (4) Nonfederal prisoners authorized to work at paid employment in the community under the laws of a jurisdiction listed in the Executive order if—
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Paid employment will not—
 - (A) Result in the displacement of employed workers;
 - (B) Be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or

(C) Impair existing contracts for services;

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

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended.

(b) Department of Justice regulations authorize the Director of the Bureau of Justice Assistance to exercise the power and authority vested in the Attorney General by the Executive order to certify and to revoke the certification of work-release laws or regulations (see 28 CFR 0.94-1(b)).

22.202 Contract clause.

The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or the Trust Territory of the Pacific Islands; unless—

(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

Subpart 22.3—Contract Work Hours and Safety Standards Act

22.300 Scope of subpart.

This subpart prescribes policies and procedures for applying the requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) (the Act) to contracts that may require or involve laborers or mechanics. In this subpart, the term “laborers or mechanics” includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

22.301 Statutory requirement.

The Act requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all such overtime hours at not less than 1 1/2 times the basic rate of pay.

22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses under-payments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Act.

(b) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the Act and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the Act despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less; or

(3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.

(d) After the contracting officer determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

22.303 Administration and enforcement.

The procedures and reports required for construction contracts in Subpart 22.4 also apply to investigations of alleged violations of the Act on other than construction contracts.

22.304 Variations, tolerances, and exemptions.

(a) The Secretary of Labor, under 40 U.S.C. 331, upon the Secretary's initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the Act (see 29 CFR 5.15).

(b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR 5.14).

22.305 Contract clause.

The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:

(a) Contracts at or below the simplified acquisition threshold.

(b) Contracts for supplies, materials, or articles ordinarily available in the open market.

(c) Contracts for transportation by land, air, or water, or for the transmission of intelligence.

(d) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.

(e) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).

(f) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.

(g) Contracts for commercial items (see Parts 2 and 12).

(h) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).

Subpart 22.4—Labor Standards for Contracts Involving Construction

22.400 Scope of subpart.

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (See definition of “Construction, alteration, or repair” in section 22.401.) Labor relations requirements prescribed in other subparts of Part 22 may also apply.

22.401 Definitions.

As used in this subpart—

“Building” or “work” generally means construction activity as distinguished from manufacturing, furnishing of materials, or servicing and maintenance work. The terms include, without limitation, buildings, structures, and improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, dredging, shoring, rehabilitation and reactivation of plants, scaffolding, drilling, blasting, excavating, clearing, and landscaping. The manufacture or furnishing of materials, articles, supplies, or equipment (whether or not a Federal or State agency acquires title to such materials, articles, supplies, or equipment during the course of the manufacture or furnishing, or owns the materials from which they are manufactured or furnished) is not “building” or “work” within the meaning of the regulations in this subpart unless conducted in connection with and at the site of such building or work as is described in the foregoing sentence, or under the United States Housing Act of 1937 and the Housing Act of 1949 in the construction or development of the project.

“Construction, alteration, or repair” means all types of work done on a particular building or work at the site thereof, including without limitation, altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site, painting and decorating, the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor, and the manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work by persons employed by the contractor or subcontractor.

“Laborers or mechanics”—

(1) Those workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(2) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen and guards. The terms “apprentice” and “trainee” are defined as follows:

(i) “Apprentice” means—

(A) a person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau; or

(B) a person in the first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(ii) “Trainee” means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

(3) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(4) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals.

The terms exclude workers whose duties are primarily executive, supervisory (except as provided in paragraph (3) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

“Public building” or “public work” means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

“Site of the work” is defined as follows:

(1) The “site of the work” is limited to the physical place or places where the construction called for in the contract will remain when work on it is completed, and nearby property, as described in paragraph (2) of this definition, used by the contractor or subcontractor during construction that, because of proximity, can reasonably be included in the “site.”

(2) Except as provided in paragraph (3) of this definition, fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., are parts of the “site of the work,” provided they are dedicated exclusively, or nearly so, to performance of the contract or project, and are so located in proximity to the actual construction location that it would be reasonable to include them.

(3) The “site of the work” does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial supplier or materialman which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work”, even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

“Wages” means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Davis-Bacon Act include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

22.402 Applicability.

(a) *Contracts for construction work.* (1) The requirements of this subpart apply—

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in Subpart 37.3;

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to—

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

(iii) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) *Nonconstruction contracts involving some construction work.* (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—

(i) The construction work is to be performed on a public building or public work;

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Davis-Bacon Act (the word “substantial” relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if—

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration

at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with non-construction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

22.403 Statutory and regulatory requirements.

22.403-1 Davis-Bacon Act.

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause (see 52.222-6) that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

22.403-2 Copeland Act.

The Copeland (Anti-Kickback) Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall contain a clause (see 52.222-10) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

22.403-3 Contract Work Hours and Safety Standards Act.

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts (see 22.305) contain a clause (see 52.222-4) specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see 22.301).

22.403-4 Department of Labor regulations.

(a) Under the statutes referred to in this 22.403 and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp, p. 1007), the Secretary of Labor has issued regulations in Title 29, Subtitle A, *Code of Federal Regulations*, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart.

(b) The Department of Labor regulations include—

(1) Part 1, relating to Davis-Bacon Act minimum wage rates;

(2) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;

(3) Part 5, relating to enforcement of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-Kickback) Act, and Service Contract Act, and by which Administrative Law Judge hearings are held; and

(5) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Administrative Review Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, or Copeland (Anti-Kickback) Act.

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

22.404 Davis-Bacon Act wage determinations.

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those laborers and mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

22.404-1 Types of wage determinations.

(a) *General wage determinations.* (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by a notice in the *Federal Register* by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12). They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published weekly in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." Notices of general wage determinations are published in the *Federal Register*. General wage determinations are effective on the publication date of the notice or upon receipt of the determination by the contracting agency, whichever occurs first.

(3) The GPO publication is available for examination at each of the 50 Regional Government Depository Libraries and many other of the 1,400 Government Depository Libraries across the country. Subscriptions may be obtained by contacting:

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

The GPO publication is divided into three volumes East, Central, and West, which may be ordered separately. The States covered by each volume are as follows:

Volume I-East		
Alabama	Maryland	Rhode Island
Connecticut	Massachusetts	South Carolina
Delaware	Mississippi	Tennessee
District of Columbia	New Hampshire	Vermont
Florida	New Jersey	Virginia
Georgia	New York	Virgin Islands
Kentucky	North Carolina	West Virginia
Maine	Pennsylvania	
	Puerto Rico	
Volume II-Central		
Arkansas	Louisiana	New Mexico
Illinois	Michigan	Ohio
Iowa	Minnesota	Oklahoma
Indiana	Missouri	Texas

Kansas	Nebraska	Wisconsin
Volume III-West		
Alaska	Hawaii	Oregon
Arizona	Idaho	South Dakota
California	Montana	Utah
Colorado	Nevada	Washington
Guam	North Dakota	Wyoming

(4) On or about January 1 of each year, an annual edition will be issued that includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed providing any modifications or superseded wage determinations issued. Each volume's annual and weekly editions will be provided in loose-leaf format.

(b) *Project wage determinations.* A project wage determination is issued at the specific request of a contracting agency. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the determination. However, if a determination expires before contract award, it may be possible to obtain an extension to the 180-day life of the determination (see 22.404-5(b)(2)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see 22.404-12).

22.404-2 General requirements.

(a) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the term of a contract, the contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(b) If the wage determination is a general wage determination or a project wage determination containing more than one rate schedule, the contracting officer shall either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied. Inclusion by reference is not permitted.

(c) The Wage and Hour Division has issued the following general guidelines for use in selecting the proper schedule(s) of wage rates:

(1) *Building* construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(2) *Residential* construction is generally the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to “building,” “residential,” or “heavy” construction.

(4) *Heavy* construction includes those projects that are not properly classified as either “building,” “residential,” or “highway,” and is of a catch-all nature. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., “dredging,” “water and sewer line,” “dams,” “flood control,” etc.).

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any doubt as to the proper application of wage rate schedules to the type or types of construction involved, guidance shall be sought before the opening of bids, or receipt of best and final offers, from the Administrator, Wage and Hour Division. Further examples are contained in Department of Labor All Agency Memoranda Numbers 130 and 131.

22.404-3 Procedures for requesting wage determinations.

(a) *Requests for general wage determinations.* If there is a general wage determination applicable to the project, the agency may use it without notifying the Department of Labor. When necessary, a request for a general wage determination may be made by submitting Standard Form (SF) 308, Request for Determination and Response to Request, to the Administrator, Wage and Hour Division, attention: Branch of Construction Contract Wage Determinations.

(b) *Requests for project wage determinations.* A contracting agency shall submit requests for project wage determinations on SF 308 to the Department of Labor. The requests shall include the following information:

(1) The location, including the county (or other civil subdivision) and State in which the proposed project is located.

(2) The name of the project and a sufficiently detailed description of the work to indicate the types of construction involved (e.g., building, heavy, highway, residential, or other type).

(3) Any available pertinent wage payment information, unless wage patterns in the area are clearly established.

(4) The estimated cost of each project.

(5) All the classifications of laborers and mechanics likely to be employed.

(c) *Time for submission of requests.* The time required by the Department of Labor for processing requests for project wage determinations varies according to the facts and circumstances in each case. An agency should expect the processing to take at least 30 days. Accordingly, agencies should submit requests to the Department of Labor at least 45 days (60 days if possible) before issuing the solicitation or exercising an option to extend the term of a contract.

(d) *Review of wage determinations.* Immediately upon receipt, the contracting agency shall examine the wage determination and inform the Department of Labor of any changes necessary or appropriate to correct errors. Private parties requesting changes should be advised to submit their requests to the Department of Labor.

22.404-4 Solicitations issued without wage determinations.

(a) If a solicitation is issued before the wage determination is obtained, a notice shall be included in the solicitation that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the solicitation.

(b) In sealed bidding, bids may not be opened until a reasonable time after the wage determination has been furnished to all bidders.

(c) In negotiated acquisitions, the contracting officer may open proposals and conduct negotiations before obtaining the wage determination. However, the contracting officer shall incorporate the wage determination into the solicitation before submission of best and final offers.

22.404-5 Expiration of project wage determinations.

(a) The contracting officer shall make every effort to ensure that contract award is made before expiration of the project wage determination included in the solicitation.

(b) The following procedure applies when contracting by sealed bidding:

(1) If a project wage determination expires before bid opening, or if it appears before bid opening that a project wage determination may expire before award, the contracting officer shall request a new determination early enough to ensure its receipt before bid opening. If necessary, the contracting officer shall postpone the bid opening date to allow a reasonable time to obtain the determination, amend the solicitation to incorporate the new determination, and permit bid-

ders to amend their bids. If the new determination does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If a project wage determination expires after bid opening but before award, the contracting officer shall request an extension of the project wage determination expiration date from the Administrator, Wage and Hour Division. The request for extension shall be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment of the conduct of Government business. If necessary, the contracting officer shall delay award to permit either receipt of the extension or receipt and processing of a new determination. If the request is granted, the contracting officer shall award the contract and modify it to apply the extended expiration date to the already incorporated project wage determination. (See 43.103(b)(1).) If the request is denied, the Administrator will proceed to issue a new project wage determination. Upon receipt, the contracting officer shall process the new determination as follows:

(i) If the new determination changes any wage rates for classifications to be used in the contract, the contracting officer may cancel the solicitation only in accordance with 14.404-1. Otherwise the contracting officer shall award the contract and incorporate the new determination to be effective on the date of contract award. The contracting officer shall equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates.

(ii) If the new determination does not change any wage rates, the contracting officer shall award the contract and modify it to include the number and date of the new determination. (See 43.103(b)(1).)

(c) The following procedure applies when contracting by negotiation:

(1) If a project wage determination will or does expire before contract award, the contracting officer shall request a new wage determination from the Department of Labor. If necessary, the contracting officer shall delay award while the new determination is obtained and processed.

(2) The contracting officer need not delay opening and reviewing proposals or discussing them with the offerors while a new determination is being obtained. The contracting officer shall request offerors to extend the period for acceptance of any proposal if that period expires or may expire before receipt and full processing of the new determination.

(3) If the new determination changes any wage rates, the contracting officer shall amend the solicitation to incorporate the new determination, and furnish the wage rate information to all prospective offerors that were sent a solicitation if the closing date for receipt of proposals has not yet

occurred, or to all offerors that submitted proposals if the closing date has passed. All offerors to whom wage rate information has been furnished shall be given reasonable opportunity to amend their proposals.

(4) If the new determination does not change any wage rates, the contracting officer shall amend the solicitation to include the number and date of the new determination and award the contract.

22.404-6 Modifications of wage determinations.

(a) *General.* (1) The Department of Labor may modify a wage determination to make it current by specifying only the items being changed or by reissuing the entire determination with changes incorporated.

(2) All project wage determination modifications expire on the same day as the original determination. The need to include a modification of a project wage determination in a solicitation is determined by the time of receipt of the modification by the contracting agency. Therefore, the contracting agency must annotate the modification of the project wage determination with the date and time immediately upon receipt.

(3) The need for inclusion of the modification of a general wage determination in a solicitation is determined by the publication date of the notice in the *Federal Register*, or by the time of receipt of the modification (annotated with the date and time immediately upon receipt) by the contracting agency, whichever occurs first. (Note the distinction between receipt by the agency (modification is effective) and receipt by the contracting officer, which may occur later.)

(b) The following applies when contracting by sealed bidding:

(1) A written action modifying a wage determination shall be effective if:

(i) It is received by the contracting agency, or notice of the modification is published in the *Federal Register*, 10 or more calendar days before the date of bid opening, or

(ii) It is received by the contracting agency, or notice of the modification is published in the *Federal Register*, less than 10 calendar days before the date of bid opening, unless the contracting officer finds that there is not reasonable time available before bid opening to notify the prospective bidders. (If the contracting officer finds that there is not reasonable time to notify bidders, a written report of the finding shall be placed in the contract file and shall be made available to the Department of Labor upon request.)

(2) All written actions modifying wage determinations received by the contracting agency after bid opening, or modifications to general wage determinations, notices of which are published in the *Federal Register* after bid opening, shall not be effective and shall not be included in the solicitation (but see paragraph (b)(6) of this subsection).

(3) If an effective modification is received by the contracting officer before bid opening, the contracting officer shall postpone the bid opening, if necessary, to allow a reasonable time to amend the solicitation to incorporate the modification and permit bidders to amend their bids. If the modification does not change the wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the modification.

(4) If an effective modification is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in 22.404-5(b)(2)(i) or (ii).

(5) If an effective modification is received by the contracting officer after award, the contracting officer shall modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the contracting officer shall modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination, notice of which is published in the *Federal Register* before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head or a designee may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer shall follow the procedures in 22.404-5(b)(2).

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations notices of which are published in the *Federal Register* before award, shall be effective.

(2) If an effective wage modification is received by the contracting officer before award, the contracting officer shall follow the procedures in 22.404-5(c)(3) or (4).

(3) If an effective wage modification is received by the contracting officer after award, the contracting officer shall follow the procedures in 22.404-6(b)(5).

(d) The following applies when modifying a contract to exercise an option to extend the term of a contract:

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option,

or within 45 days after submission of a wage determination request (22.404-3(c)), whichever is later; or

(ii) The Department of Labor publishes notice of modifications to general wage determinations in the *Federal Register* before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer must modify the contract to incorporate the modified wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

22.404-7 Correction of wage determinations containing clerical errors.

Upon the Department of Labor's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any solicitation or active contract. Before contract award, the contracting officer must follow the procedures in 22.404-5(b)(1) or (2)(i) or (ii) in sealed bidding, and the procedures in 22.404-5(c)(3) or (4) in negotiations. After contract award, the contracting officer must follow the procedures at 22.404-6(b)(5), except that for contract modifications to exercise an option to extend the term of the contract, the contracting officer must follow the procedures at 22.404-6(d)(2).

22.404-8 Notification of improper wage determination before award.

(a) Written notification by the Department of Labor received by the contracting officer prior to award that—

(1) A solicitation includes the wrong wage determination or the wrong rate schedule; or

(2) A wage determination is withdrawn by the Department of Labor as a result of a decision by the Wage Appeals Board, shall be effective immediately without regard to 22.404-6.

(b) In sealed bidding, the contracting officer shall proceed in accordance with the following:

(1) If the notification reaches the contracting officer before bid opening, the contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to—

(i) Obtain the appropriate determination if a new wage determination is required;

(ii) Amend the solicitation to incorporate the determination (or rate schedule); and

(iii) Permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If the notification reaches the contracting officer after bid opening but before award, the contracting officer shall delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination. The appropriate wage determination shall be processed in accordance with 22.404-5(b)(2)(i) or (ii).

(c) In negotiated acquisitions, the contracting officer shall delay award, if necessary, and process the notification in the manner prescribed for a new wage determination at 22.404-5(c)(3).

22.404-9 Award of contract without required wage determination.

(a) If a contract is awarded without the required wage determination (*i.e.*, incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the contracting officer shall initiate action to incorporate the required determination in the contract immediately upon discovery of the error. If a required wage determination (valid determination in effect on the date of award) is not available, the contracting officer shall expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(b) The contracting officer shall—

(1) Modify the contract to incorporate the required wage determination (retroactive to the date of award) and equitably adjust the contract price if appropriate; or

(2) Terminate the contract.

22.404-10 Posting wage determinations and notice.

The contractor must keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. The contracting officer shall furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract shall be indicated in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

22.404-11 Wage determination appeals.

The Secretary of Labor has established an Administrative Review Board which decides appeals of final decisions made by the Department of Labor concerning Davis-Bacon Act wage determinations. A contracting agency or other interested party may file a petition for review under the procedures

in 29 CFR part 7 if reconsideration by the Administrator has been sought pursuant to 29 CFR 1.8 and denied.

22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.

(a) Each time the contracting officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the contracting officer must modify the contract to incorporate the most current wage determination.

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

(c) The contracting officer must include in fixed-price contracts a clause that specifies one of the following methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the contract:

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (*e.g.*, the R.S. Means Cost Estimating System, or the U.S. Army Computer-Aided Cost Estimating System), which is multiplied in the contract by a factor proposed by the contractor (*e.g.*, .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.

(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Davis-Bacon Act. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Act and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

22.405 Labor standards for construction work performed under facilities contracts.

If it is not certain at the time of contract award that construction work may be required under a facilities contract (see 45.301), the clause at 52.222-17, Labor Standards for Construction Work—Facilities Contracts (see 22.407(c)), shall be included in the contract. When covered construction work is necessary after contract award, the contracting officer shall obtain the appropriate wage determination and incorporate it in the contract and identify the item or items of construction work to which the clauses apply.

22.406 Administration and enforcement.

22.406-1 Policy.

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at 52.222-6, Davis-Bacon Act, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if

a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (*i.e.*, 1 1/2 times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at 52.222-6, Davis-Bacon Act, shall require that the contractor submit to the contracting officer, Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of SF 1444 from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be

employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of SF 1444) of that action to the Administrator, Wage and Hour Division, for approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of SF 1444) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at 52.222-6 and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

22.406-4 Apprentices and trainees.

(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at 52.222-8, Payrolls and Basic Records, to ensure that the contractor has complied with the clause at 52.222-9, Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at 52.222-9, the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

22.406-5 Subcontracts.

In accordance with the requirements of the clause at 52.222-11, Subcontracts (Labor Standards), the contractor

and subcontractors at any tier are required to submit a fully executed SF 1413, Statement and Acknowledgment, upon award of each subcontract.

22.406-6 Payrolls and statements.

(a) *Submission.* In accordance with the clause at 52.222-8, Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor Form WH-347, Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

- (i) The correctness of classifications and rates;
- (ii) Fringe benefits payments;
- (iii) Hours worked;
- (iv) Deductions; and

(v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reason, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Ques-

tions concerning release of this information may involve the Freedom of Information Act (FOIA).

22.406-7 Compliance checking.

(a) *General.* The contracting officer shall make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See Standard Form 1445.)

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(c) *Special compliance checks.* Situations that may require special compliance checks include —

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information.

22.406-8 Investigations.

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the Administrator, Wage and Hour Division, to obtain—

- (i) Investigation and enforcement instructions; or
- (ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of non-compliance.

(c) *Contractor Notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection—

(1) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. Standard Form 1446, Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The agency head must process the report as follows:

(i) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour

Division, within 60 days after completion of the investigation, if—

(A) A contractor or subcontractor underpaid by \$1,000 or more;

(B) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act);

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards Act;

(E) Corrective measures taken; and

(F) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the case and retain the report in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally 18 U.S.C. 874 or 1001), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General's consideration.

(e) *Department of Labor investigations.* The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(1) Underpayments totaling \$1,000 or more;

(2) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Davis-Bacon Act); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards Act.

(f) *Other investigations.* The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (e) of this subsection.

22.406-9 Withholding from or suspension of contract payments.

(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see 22.406-8), or upon request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards Act. (See 22.302.)

(1) If the contracting officer believes a violation exists or upon request of the Department of Labor, the contracting officer must withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either Davis-Bacon Act or Contract Work Hours and Safety Standards Act requirements.

(2) If a subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the contracting officer must not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Davis-Bacon Act and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(c) *Disposition of contract payments withheld or suspended—*(1) *Forwarding wage underpayments to the Secretary of the Treasury.* Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must forward to the appropriate disbursing office Standard Form (SF) 1093, Schedule of Withholdings Under the Davis-Bacon Act (40 U.S.C. 276(a)) and/or Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333). Attach to the SF 1093 a list of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. Also, the contracting officer must indicate if restitution was not made because the employee could not be located. The Government may assist underpaid employees in preparation of their claims. The disbursing office must submit the SF 1093 with attached additional data and the funds withheld (by check) to the Secretary of the Treasury.

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy validated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) *Limitation on forwarding or returning funds.* If the Department of Labor requested the withholding or if the findings are disputed (see 22.406-10(e)), the contracting officer must not forward the funds to the Secretary of the Treasury, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

- (1) Misclassification of workers;
- (2) Hours of work;
- (3) Wage rates and payment;
- (4) Payment of overtime;
- (5) Withholding practices; and
- (6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at 52.222-14, Disputes Concerning Labor Standards, and not under the clause at 52.233-1, Disputes.

(2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

(d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.

(e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR part 6, and hearings before the Labor Department Administrative

Review Board are conducted in accordance with 29 CFR part 7.

(f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards Act or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Davis-Bacon Act, or has committed violations of the Davis-Bacon Act that constitute a disregard of its obligations to employees or subcontractors under Section 3(a) of that Act.

22.406-11 Contract terminations.

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, and the Comptroller General. The report shall include—

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and
- (e) A description of the work.

22.406-12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, or the Copeland (Anti-Kickback) Act.

22.406-13 Semiannual enforcement reports.

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Davis-Bacon Act and Contract Work Hours and Safety Standards Act is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the Department of Labor within 30 days after

the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

22.407 Contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts in excess of \$2,000 for construction within the United States:

- (1) The clause at 52.222-6, Davis-Bacon Act.
- (2) The clause at 52.222-7, Withholding of Funds.
- (3) The clause at 52.222-8, Payrolls and Basic Records.
- (4) The clause at 52.222-9, Apprentices and Trainees.
- (5) The clause at 52.222-10, Compliance with Copeland Act Requirements.
- (6) The clause at 52.222-11, Subcontracts (Labor Standards).
- (7) The clause at 52.222-12, Contract Termination-Debarment.
- (8) The clause at 52.222-13, Compliance with Davis-Bacon and Related Act Regulations.
- (9) The clause at 52.222-14, Disputes Concerning Labor Standards.
- (10) The clause at 52.222-15, Certification of Eligibility.

(b) The contracting officer shall insert the clause at 52.222-16, Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under 22.402(b) the requirements of this subpart apply to the construction work, the contracting officer shall insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.

(d) The contracting officer shall insert the clause at 52.222-17, Labor Standards for Construction Work—Facilities Contracts, in solicitations and contracts, if a facilities contract (see 45.301) may require covered construction work (see 22.402(b)) to be performed in the United States.

(e) Insert the clause at 52.222-30, Davis-Bacon Act—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

- (1) A fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(1) or (2); or
- (2) A cost-reimbursable type contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract.

FAC 2001-01 DECEMBER 21, 2001

SUBPART 22.4—LABOR STANDARDS FOR CONTRACTS INVOLVING
CONSTRUCTION

22.407

(f) Insert the clause at 52.222-31, Davis-Bacon Act—Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at 22.404-12(c)(3).

(g) Insert the clause at 52.222-32, Davis-Bacon Act—Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Davis-Bacon Act that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at 22.404-12(c)(4).

Subpart 22.5—[Reserved]

Subpart 22.6—Walsh-Healey Public Contracts Act

22.601 [Reserved]

22.602 Statutory requirements.

Except for the exemptions at 22.604, all contracts subject to the Walsh-Healey Public Contracts Act (the Act) (41 U.S.C. 35-45) and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding \$10,000, shall include or incorporate by reference the stipulations required by the Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

22.603 Applicability.

The requirements in 22.602 apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed \$10,000, unless exempted under 22.604.

22.604 Exemptions.

22.604-1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the Act:

- (a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase “in the open market” generally (such as commercial items, see Part 12); or where a specific purchase is made under the conditions described in 6.302-2 in circumstances where immediate delivery is required by the public exigency.
- (b) Perishables, including dairy, livestock, and nursery products.
- (c) Agricultural or farm products processed for first sale by the original producers.
- (d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

22.604-2 Regulatory exemptions.

(a) Contracts for the following acquisitions are fully exempt from the Act (see 41 CFR 50-201.603):

- (1) Public utility services.
- (2) Supplies manufactured outside the United States, Puerto Rico, or the Virgin Islands.
- (3) Purchases against the account of a defaulting contractor where the stipulations of the Act were not included in the defaulted contract.

(4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b)(1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act's stipulations; provided, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the—

Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
Washington, DC 20210.

All other requests shall be transmitted to the—

Administrator of the Wage and Hour Division
U.S. Department of Labor
Washington, DC 20210.

22.605 Rulings and interpretations of the Act.

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the Act (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$10,000 or less is subsequently modified to exceed \$10,000, the contract becomes subject to the Act for work performed after the date of the modification.
- (2) If a contract for more than \$10,000 is subsequently modified by mutual agreement to \$10,000 or less, the contract is not subject to the Act for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the Act in contracts in excess of \$10,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.
- (4) If a contract subject to the Act is awarded to a contractor operating Government-owned facilities, the stipulations of the Act affect the employees of that contractor the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the Act unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$10,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) [Reserved]

22.606 [Reserved]

22.607 [Reserved]

22.608 Procedures.

(a) *Award.* When a contract subject to the Act is awarded, the contracting officer, in accordance with regulations or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation.* In the event of a violation of a stipulation required under the Act, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 22.609), and furnish any information available.

22.609 Regional jurisdictions of the Department of Labor, Wage and Hour Division.

Geographic jurisdictions of the following regional offices of the DoL, Wage and Hour Division, are shown here, and

contracting officers should contact them in all situations required by this subpart, unless otherwise specified:

(a) The Region I and Region II office located in New York, New York, has jurisdiction for Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(b) The Region III office located in Philadelphia, Pennsylvania, has jurisdiction for Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

(c) The Region IV office located in Atlanta, Georgia, has jurisdiction for Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(d) The Region V and Region VII office located in Chicago, Illinois, has jurisdiction for Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, and Wisconsin.

(e) The Region VI and Region VIII office located in Dallas, Texas, has jurisdiction for Arkansas, Colorado, Louisiana, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming.

(f) The Region IX and Region X office located in San Francisco, California, has jurisdiction for Alaska, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, and Washington.

22.610 Contract clause.

The contracting officer shall insert the clause at 52.222-20, Walsh-Healey Public Contracts Act, in solicitations and contracts covered by the Act (see 22.603, 22.604, and 22.605).

Subpart 22.7—[Reserved]

Subpart 22.8—Equal Employment Opportunity

22.800 Scope of subpart.

This subpart prescribes policies and procedures pertaining to nondiscrimination in employment by contractors and subcontractors.

22.801 Definitions.

As used in this subpart—

“Affirmative action program” means a contractor’s program that complies with Department of Labor regulations to ensure equal opportunity in employment to minorities and women.

“Compliance evaluation” means any one or combination of actions that the Office of Federal Contract Compliance Programs (OFCCP) may take to examine a Federal contractor’s compliance with one or more of the requirements of E.O. 11246.

“Contractor” includes the terms “prime contractor” and “subcontractor.”

“Deputy Assistant Secretary” means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Equal Opportunity clause” means the clause at 52.222-26, Equal Opportunity, as prescribed in 22.810(e).

“E.O. 11246” means Parts II and IV of Executive Order 11246, September 24, 1965 (30 FR 12319), and any Executive order amending or superseding this order (see 22.802). This term specifically includes the Equal Opportunity clause at 52.222-26, and the rules, regulations, and orders issued pursuant to E.O. 11246 by the Secretary of Labor or a designee.

“Prime contractor” means any person who holds, or has held, a Government contract subject to E.O. 11246.

“Recruiting and training agency” means any person who refers workers to any contractor or provides or supervises apprenticeship or training for employment by any contractor.

“Site of construction” means the general physical location of any building, highway, or other change or improvement to real property that is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair; and any temporary location or facility at which a contractor or other participating party meets a demand or performs a function relating to a Government contract or subcontract.

“Subcontract” means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee)—

(1) For the purchase, sale, or use of personal property or nonpersonal services that, in whole or in part, are necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

“Subcontractor” means any person who holds, or has held, a subcontract subject to E.O. 11246. The term “first-tier subcontractor” means a subcontractor holding a subcontract with a prime contractor.

“United States” means the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

22.802 General.

(a) It is the GPO’s policy to adhere to the principles of Executive Order 11246, as amended. Executive Order 11246, as amended, sets forth the Equal Opportunity clause and requires that all agencies—

(1) Include this clause in all nonexempt contracts and subcontracts (see 22.807); and

(2) Act to ensure compliance with the clause and the regulations of the Secretary of Labor to promote the full realization of equal employment opportunity for all persons, regardless of race, color, religion, sex, or national origin.

(b) No contract or modification involving new acquisition shall be entered into, and no subcontract shall be approved by a contracting officer, with a person who has been found ineligible by the Deputy Assistant Secretary for reasons of non-compliance with the requirements of E.O. 11246.

(c) No contracting officer or contractor shall contract for supplies or services in a manner so as to avoid applicability of the requirements of E.O. 11246.

(d) Contractor disputes related to compliance with its obligation shall be handled according to the rules, regulations, and relevant orders of the Secretary of Labor (see 41 CFR 60-1.1).

22.803 Responsibilities.

(a) The Secretary of Labor is responsible for the—

(1) Administration and enforcement of prescribed parts of E.O. 11246; and

(2) Adoption of rules and regulations and the issuance of orders necessary to achieve the purposes of E.O. 11246.

(b) The Secretary of Labor has delegated authority and assigned responsibility to the Deputy Assistant Secretary for carrying out the responsibilities assigned to the Secretary by E.O. 11246, except for the issuance of rules and regulations of a general nature.

(c) The Director, MMS, is responsible for ensuring that the requirements of this subpart are carried out within the agency.

22.804 Affirmative action programs.

22.804-1 Nonconstruction.

Except as provided in 22.807, each nonconstruction prime contractor and each subcontractor with 50 or more employees and either a contract or subcontract of \$50,000 or more, or

Government bills of lading that in any 12-month period total, or can reasonably be expected to total, \$50,000 or more, is required to develop a written affirmative action program for each of its establishments. Each contractor and subcontractor shall develop its written affirmative action programs within 120 days from the commencement of its first such Government contract, subcontract, or Government bill of lading.

22.804-2 Construction.

(a) Construction contractors that hold a nonexempt (see 22.807) Government construction contract are required to meet—

(1) The contract terms and conditions citing affirmative action requirements applicable to covered geographical areas or projects; and

(2) Applicable requirements of 41 CFR 60-1 and 60-4.

(b) Each agency shall maintain a listing of covered geographical areas that are subject to affirmative action requirements that specify goals for minorities and women in covered construction trades. Information concerning, and additions to, this listing will be provided to the principally affected contracting officers in accordance with agency procedures. Any contracting officer contemplating a construction project in excess of \$10,000 within a geographic area not known to be covered by specific affirmative action goals shall request instructions on the most current information from the OFCCP regional office, or as otherwise specified in agency regulations, before issuing the solicitation.

(c) Contracting officers shall give written notice to the OFCCP regional office within 10 working days of award of a construction contract subject to these affirmative action requirements. The notification shall include the name, address, and telephone number of the contractor; employer identification number; dollar amount of the contract; estimated starting and completion dates of the contract; the contract number; and the geographical area in which the contract is to be performed. When requested by the OFCCP regional office, the contracting officer shall arrange a conference among contractor, contracting activity, and compliance personnel to discuss the contractor's compliance responsibilities.

22.805 [Reserved]

22.806 Inquiries.

(a) An inquiry from a contractor regarding status of its compliance with E.O. 11246, or rights of appeal to any of the actions in 22.809, shall be referred to the OFCCP regional office.

(b) Labor union inquiries regarding the revision of a collective bargaining agreement in order to comply with E.O. 11246 shall be referred to the Deputy Assistant Secretary.

22.807 Exemptions.

(a) Under the following exemptions, all or part of the requirements of E.O. 11246 may be excluded from a contract subject to E.O. 11246:

(1) *National security.* The agency head may determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of this subpart is necessary to the national security.

(2) *Specific contracts.* The Director, MMS, may exempt any contract if the Director, MMS, deems that special circumstances in the national interest so require. Groups or categories of contracts of the same type may also be exempted if the Director, MMS, finds it impracticable to act upon each request individually or if group exemptions will contribute to convenience in the administration of E.O. 11246.

(b) The following exemptions apply even though a contract or subcontract contains the Equal Opportunity clause:

(1) *Transactions of \$10,000 or less.* The Equal Opportunity clause is required to be included in prime contracts and subcontracts by 22.802(a). Individual prime contracts or subcontracts of \$10,000 or less are exempt from application of the Equal Opportunity clause, unless the aggregate value of all prime contracts or subcontracts awarded to a contractor in any 12-month period exceeds, or can reasonably be expected to exceed, \$10,000. (Note: Government bills of lading, regardless of amount, are not exempt.)

(2) *Work outside the United States.* Contracts are exempt from the requirements of E.O. 11246 for work performed outside the United States by employees who were not recruited within the United States.

(3) *Contracts with State or local governments.* The requirements of E.O. 11246 in any contract with a State or local government (or any agency, instrumentality, or subdivision thereof) shall not be applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the contract.

(4) *Work on or near Indian reservations.* It shall not be a violation of E.O. 11246 for a contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation. This applies to that area where a person seeking employment could reasonably be expected to commute to and from in the course of a work day. Contractors extending such a preference shall not, however, discriminate among Indians on the basis of religion, sex, or tribal affiliation, and the use of such preference shall not excuse a contractor from complying with E.O. 11246, rules and regulations of the Secretary of Labor, and applicable clauses in the contract.

(5) *Facilities not connected with contracts.* The Director, MMS, may exempt from the requirements of E.O. 11246 any of a contractor's facilities that the Director, MMS, finds to be in all respects separate and distinct from activities of the contractor related to performing the contract, provided, that the Director, MMS, also finds that the exemption will not interfere with, or impede the effectiveness of, E.O. 11246.

(6) *Indefinite-quantity contracts.* With respect to indefinite-quantity contracts and subcontracts, the Equal Opportunity clause applies unless the contracting officer has reason to believe that the amount to be ordered in any year under the contract will not exceed \$10,000. The applicability of the Equal Opportunity clause shall be determined by the contracting officer at the time of award for the first year, and annually thereafter for succeeding years, if any. Notwithstanding the above, the Equal Opportunity clause shall be applied to the contract whenever the amount of a single order exceeds \$10,000. Once the Equal Opportunity clause is determined to be applicable, the contract shall continue to be subject to such clause for its duration regardless of the amounts ordered, or reasonably expected to be ordered, in any year.

(c) To request an exemption under paragraph (a)(2) or (b)(5) of this section, the contracting officer shall submit, under agency procedures, a detailed justification for omitting all, or part of, the requirements of E.O. 11246. Requests for exemptions under paragraph (a)(2) or (b)(5) of this section shall be submitted to the Director, MMS, for approval.

(d) The Director, MMS, may withdraw the exemption for a specific contract, or group of contracts, if the Director, MMS, deems that such action is necessary and appropriate to achieve the purposes of E.O. 11246. Such withdrawal shall not apply—

(1) To contracts awarded before the withdrawal; or

(2) To any sealed bid contract (including restricted sealed bidding), unless the withdrawal is made more than 10 days before the bid opening date.

22.808 Complaints.

Complaints received by the contracting officer alleging violation of the requirements of E.O. 11246 shall be referred immediately to the GPO General Counsel. The complainant shall be advised in writing of the referral. The contractor that is the subject of a complaint shall not be advised in any manner or for any reason of the complainant's name, the nature of the complaint, or the fact that the complaint was received.

22.809 Enforcement.

Upon the written direction of the Director, MMS, one or more of the following actions, as well as administrative sanctions and penalties, may be exercised against contractors found to be in violation of E.O. 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

(a) Publication of the names of the contractor or its unions.

(b) Cancellation, termination, or suspension of the contractor's contracts or portion thereof.

(c) Debarment from future Government contracts, or extensions or modifications of existing contracts, until the contractor has established and carried out personnel and employment policies in compliance with E.O. 11246 and the regulations of the Secretary of Labor.

(d) Referral by the Deputy Assistant Secretary of any matter arising under E.O. 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.

22.810 Solicitation provisions and contract clauses.

(a) When a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, the contracting officer shall insert—

(1) The clause at 52.222-21, Prohibition of Segregated Facilities, in the solicitation and contract; and

(2) The provision at 52.222-22, Previous Contracts and Compliance Reports, in the solicitation.

(b) The contracting officer shall insert the provision at 52.222-23, Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction, in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of \$10,000.

(c) The contracting officer shall insert the provision at 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation, in solicitations other than those for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be \$10 million or more.

(d) The contracting officer shall insert the provision at 52.222-25, Affirmative Action Compliance, in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity.

(e) The contracting officer shall insert the clause at 52.222-26, Equal Opportunity, in solicitations and contracts (see 22.802) unless the contract is exempt from all of the requirements of E.O. 11246 (see 22.807(a)). If the contract is exempt from one or more, but not all, of the requirements of E.O. 11246, the contracting officer shall use the clause with its Alternate I.

(f) The contracting officer shall insert the clause at 52.222-27, Affirmative Action Compliance Requirements for Construction, in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, when the amount of the contract is expected to be in excess of \$10,000.

(g) The contracting officer shall insert the clause at 52.222-29, Notification of Visa Denial, in contracts that will include

the clause at 52.222-26, Equal Opportunity, if the contractor is required to perform in or on behalf of a foreign country.

Subpart 22.9—Nondiscrimination Because of Age**22.901 Policy.**

The Government policy is as follows:

(a) Contractors and subcontractors shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.

(b) Contractors and subcontractors, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government contracts, a

maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(c) MMS will bring this policy to the attention of contractors. The use of contract clauses is not required.

22.902 Handling complaints.

MMS shall bring complaints regarding a contractor's compliance with this policy to that contractor's attention (in writing, if appropriate), stating the policy, indicating that the contractor's compliance has been questioned, and requesting that the contractor take any appropriate steps that may be necessary to comply.

Subpart 22.10—Service Contract Act of 1965, as Amended

22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*), the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

22.1001 Definitions.

As used in this subpart—

“Act” or “Service Contract Act” means the Service Contract Act of 1965.

“Agency labor advisor” means an individual responsible for advising contracting agency officials on Federal contract labor matters.

“Contractor” includes a subcontractor at any tier whose subcontract is subject to the provisions of the Act.

“Multiple year contracts” means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts (see 17.103).

“Notice” means Standard Form (SF) 98, “Notice of Intention to Make a Service Contract and Response to Notice,” and SF 98a, “Attachment A.” The term “Notice” is always capitalized in this subpart when it means Standard Forms 98 and 98a.

“Service contract” means any Government contract, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted under section 7 of the Act (41 U.S.C. 356; see 22.1003-3 and 22.1003-4), or any subcontract at any tier thereunder. See 22.1003-5 and 29 CFR 4.130 for a partial list of services covered by the Act.

“Service employee” means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

“United States” includes any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), American Samoa, Guam, Northern Mariana Islands, Wake Island, and Johnston Island but does not include any other territory under U.S. jurisdiction or any U.S. base or possession within a foreign country.

“Wage and Hour Division” means the unit in the Employment Standards Administration of the Department of Labor to

which is assigned functions of the Secretary of Labor under the Act.

“Wage determination” means a determination of minimum wages or fringe benefits made under sections 2(a) or 4(c) of the Act (41 U.S.C. 351(a) or 353(c)) applicable to the employment in a given locality of one or more classes of service employees.

22.1002 Statutory requirements.

22.1002-1 General.

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under 41 U.S.C. 353(d), service contracts may not exceed 5 years.

22.1002-2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of \$2,500 to which no predecessor contractor’s collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

22.1002-3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor’s collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines—

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm’s length negotiations.

(b) Paragraphs in this Subpart 22.10 which deal with this statutory requirement and the Department of Labor’s implementing regulations are 22.1008-3, concerning applicability of this requirement and the forwarding of a collective bargaining agreement with a Notice (SF 98, 98a); 22.1010, concerning notification to contractors and bargaining representatives

of procurement dates; 22.1012-3, explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and 22.1013 and 22.1021, explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

22.1002-4 Application of the Fair Labor Standards Act minimum wage.

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act (29 U.S.C. 206).

22.1003 Applicability.

22.1003-1 General.

This Subpart 22.10 applies to all Government contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted in 22.1003-3 and 22.1003-4 of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

22.1003-2 Geographical coverage of the Act.

The Act applies to service contracts performed in the United States (see 22.1001). The Act does not apply to contracts performed outside the United States.

22.1003-3 Statutory exemptions.

The Act does not apply to—

(a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(b) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (41 U.S.C. 35-45);

(c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Act other than section 10 (41 U.S.C. 358). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Act to protect prevailing labor standards (41 U.S.C. 353(b)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Act shall be submitted in writing through contracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in 22.1003-3 of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the Act:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(4) Contracts as follows:

(i) Contracts principally for the maintenance, calibration, or repair of the following types of equipment are exempt, subject to the restrictions in subdivisions (b)(4)(ii), (b)(4)(iii), and (b)(4)(iv) of this subsection.

(A) Automated data processing equipment and office information/word processing systems.

(B) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment;" Class 6525, "X-Ray Equipment;" FSC Group 66, Class 6630, "Chemical Analysis Instruments;" and Class 6665, "Geographical and Astronomical Instruments;" are

largely composed of the types of equipment exempted hereunder).

(C) Office/business machines not otherwise exempt pursuant to subdivision (b)(4)(i)(A) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemption set forth in this subparagraph (b)(4) of this subsection shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations.

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices (see 29 CFR 4.123(e)(1)(ii)(B)) for the maintenance, calibration, or repair of such commercial items.

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers.

(D) The contractor certifies in the contract to the provisions in subdivision (b)(4)(ii) of this subsection. (See 22.1006(e).)

(iii)(A) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer before contract award. In determining that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(B) If any potential offerors would not qualify for the exemption, the contracting officer shall incorporate in the solicitation the Service Contract Act clause (see 22.1006(a)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see 22.1007).

(iv) If the Department of Labor determines after contract award that any of the requirements for exemption in subparagraph (b)(4) of this subsection have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

22.1003-5 Some examples of contracts covered.

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

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, housekeeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see 22.1003-4(b)(4).)

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

22.1003-6 Repair distinguished from remanufacturing of equipment.

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

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

(i) The item or equipment is required to be completely or substantially torn down into individual component parts.

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.

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

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

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

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

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

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

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

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

22.1003-7 Questions concerning applicability of the Act.

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

22.1004 Department of Labor responsibilities and regulations.

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

- (a) Service contract labor standards provisions and procedures (29 CFR part 4, Subpart A);

- (b) Wage determination procedures (29 CFR part 4, Subpart B);

- (c) Application of the Act (rulings and interpretations) (29 CFR part 4, Subpart C);

- (d) Compensation standards (29 CFR part 4, Subpart D);

- (e) Enforcement (29 CFR part 4, Subpart E);

- (f) Safe and sanitary working conditions (29 CFR part 1925);

- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR part 6); and

- (h) Practice before the Board of Service Contract Appeals (29 CFR part 8).

22.1005 [Reserved]

22.1006 Contract clauses.

(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is—

- (1) For over \$2,500; or

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

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

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

new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

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

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

(1) The clause at 52.222-41 applies;

(2) The contract resulting from the solicitation succeeds a contract for substantially the same services to be performed in the same locality;

(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and

(4) All applicable Department of Labor wage determinations have been requested but not received.

(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of information technology, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).

(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract—

(i) The applicable Service Contract Act clause(s); and

(ii) The appropriate Department of Labor wage determination if the contract exceeds \$2,500.

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

22.1007 Requirement to submit Notice (SF 98/98a).

The contracting officer shall submit Standard Forms 98 and 98a (see 53.301-98 and 53.301-98a), “Notice of Intention to Make a Service Contract and Response to Notice” and “Attachment A” (both forms hereinafter referred to as “Notice”), together with any required supplemental information to the—

Administrator, Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

for the following service contracts:

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

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

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

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

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

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

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

22.1008 Procedures for preparing and submitting Notice (SF 98/98a).

22.1008-1 Preparation of Notice (SF 98/98a).

The contracting officer shall complete and submit the Notice in accordance with the instructions on the SF 98 and shall supplement it with information required under this section. Care should be taken to ensure that all required information is provided to avert return without action by the Department of Labor. The contracting officer shall retain a copy of the completed Notice and any required supplementary information until the signed and dated response to the Notice is received from the Department of Labor and placed in the contract file.

22.1008-2 Preparation of SF 98a.

(a) The SF 98a shall contain the following information concerning the service employees expected to be employed by the contractor and any known subcontractors in performing the contract:

(1) All classes of service employees to be utilized.

(i) If a wage determination is to be based on a collective bargaining agreement (CBA) (see 22.1002-3 and 22.1008-3), use the exact title shown in the CBA.

(ii) For other than subdivision (a)(1)(i) of this subsection—

(A) Use the exact title shown in the Wage and Hour Division's Service Contract Act Directory of Occupations (see paragraph (b) of this subsection);

(B) Provide an appropriate job title and job description if the Directory cannot be used.

(2) The estimated number of service employees in each class; and

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

(b)(1) The Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory) contains standard job titles and definitions (descriptions) for many commonly utilized service employee occupations. Contracting officers shall use this Directory to the maximum extent possible in listing service employee classes on the SF 98a. This usage will enhance the timely issuance of comprehensive wage determinations.

(2) If the job title contained in the Directory differs from that contained in the statement of work but the job definition (description) in the Directory and the statement of work match sufficiently, the contracting officer shall use the Directory job title.

(3) The latest edition of the Directory is available for sale by the Superintendent of Documents and may be ordered by calling (202) 783-3238 or writing to—

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

Contracting agencies, in accordance with agency procedures, are responsible for notifying their own personnel of a new edition of the Directory.

22.1008-3 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

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

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

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

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

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

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

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

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

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see 22.1012-3(a)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see 22.1012-3(b)); and

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

(d) If section 4(c) of the Act applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at 52.222-41, Service Contract Act of 1965, as amended, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.) The contracting officer shall submit a copy of each collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under each agreement with the Notice.

(e) Section 4(c) of the Act will not apply if the Secretary of Labor determines (1) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bar-

gaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (2) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see 22.1013 and 22.1021). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall separately list on the SF 98a the service employee classifications—

- (1) Subject to the collective bargaining agreement; and
- (2) Not subject to any collective bargaining agreement.

22.1008-4 Procedures when place of performance is unknown.

(See 22.1009.)

22.1008-5 Multiple-year contracts.

If the proposed contract is multiple year and is not subject to annual appropriations, the contracting officer shall furnish with the Notice a statement in writing describing the type of funding and giving the length of the performance period. Unless otherwise advised by the wage and hour division that a Notice must be filed on the annual anniversary date, the contracting officer shall submit a new Notice on each biennial anniversary date of the multiple year contract if its term is for a period in excess of 2 years.

22.1008-6 Contract modifications (options, extensions, changes in scope) and anniversary dates.

If the purpose of the Notice is to obtain a wage determination for an exercise of an option, an extension to the contract term, a change in scope (see 22.1007(b)(2)), or the anniversary date of a multiple year contract, the contracting officer shall fill in Box 2 of the SF 98 as follows:

(a) In the "Estimated solicitation date" subbox, indicate, as appropriate:

"Mod-Exercise of Option;" "Mod-Extension;" "Mod-Change in Scope;" "Annual Anniversary;" or "Biennial Anniversary;" and

(b) In the "month/day/year" subbox, indicate the date the wage determination is required.

22.1008-7 Required time of submission of Notice.

(a) If the contract action is for a recurring or known requirement, the contracting officer shall submit the Notice not less than 60 days (nor more than 120 days, except with the approval of the Wage and Hour Division) before the earlier of—

- (1) Issuance of any invitation for bids;
- (2) Issuance of any request for proposals;
- (3) Commencement of negotiations;
- (4) Issuance of modification for exercise of option, contract extension, or change in scope;
- (5) Annual anniversary date of a contract for more than 1 year subject to annual appropriations; or
- (6) Each biennial anniversary date of a contract for more than 2 years not subject to annual appropriations unless otherwise advised by the Wage and Hour Division (see 22.1008-5).

(b) If the contract action is for a nonrecurring or unknown requirement for which the advance planning described in paragraph (a) of this subsection is not feasible, the contracting officer shall submit the Notice as soon as possible, but not later than 30 days before the contracting actions in paragraph (a) of this subsection. The contracting officer should indicate on the Notice that the requirement is nonrecurring or unknown and advance planning was not feasible.

(c) If exceptional circumstances prevent timely submission, as required by paragraphs (a) and (b) of this subsection, the contracting officer shall submit the Notice and the required supplemental information with a written statement of the reason for delay as soon as practicable.

(d) In an emergency situation requiring an immediate wage determination response, the contracting officer shall, in accordance with contracting agency procedures, contact the Wage and Hour Division by telephone for guidance before submitting the Notice.

22.1009 Place of performance unknown.

22.1009-1 General.

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see 22.1009-2) and then may follow the procedures either in 22.1009-3 or in 22.1009-4.

22.1009-2 Attempt to identify possible places of performance.

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

- (a) Locations of previous contractors and their competitors.
- (b) The solicitation mailing list.
- (c) Responses to a presolicitation notice (see 5.204).

22.1009-3 All possible places of performance identified.

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer, as required in 22.1008, shall submit the Notice to the Wage and Hour Division. If the number of places of performance exceeds the space available on the Notice, the contracting officer shall provide a listing by state-county-city/town in an attachment to the Notice.

(b) The Wage and Hour Division may issue a wage determination for each different geographical area of performance identified by the contracting officer, or in unusual situations it may issue a wage determination for one or more composite areas of performance. If there is a substantial number of places or areas of performance indicating the need for a wage determination for one or more composite areas of performance, the contracting officer should, before submitting the Notice, contact the Wage and Hour Division concerning the issuance of such a wage determination.

(c) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall follow one of the following procedures:

- (1) Continue to follow the procedures in this subsection and:
 - (i) Submit Notices for the additional places of performance to the Wage and Hour Division, and
 - (ii) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.
- (2) Follow the procedures in 22.1009-4.

22.1009-4 All possible places of performance not identified.

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

- (a) If the contracting officer has identified possible places or areas where services might be performed, the contracting officer must submit the Notice to the Wage and Hour Division (see 22.1009-3(a) and (b)).
- (b) Include the following information in the notice of contract action (see 5.207(g)(4)):

- (1) That the place of performance is unknown.
- (2) The possible places or areas of performance for which the contracting officer has requested wage determinations.

(3) That the contracting officer will request wage determinations for additional possible places of performance if asked to do so in writing.

(4) The time and date by which requests for wage determinations for additional places must be received by the contracting officer.

(c) Insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, in solicitations and contracts. Include the information required in the clause by subparagraphs (b)(2) and (b)(4) of this subsection. The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(d) The procedures in 14.304 shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(e) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

- (1) Submit Notices for the additional places of performance to the Wage and Hour Division; and
- (2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(f) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

- (1) Award the contract;
- (2) Request a wage determination; and
- (3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at 52.222-49, Service Contract—Place of Performance Unknown.

22.1010 Notification to interested parties under collective bargaining agreements.

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs 22.1012-3(a) and (b) to apply. The contracting officer shall retain a copy of the notification in the contract file.

22.1011 Response to Notice by Department of Labor.

22.1011-1 Department of Labor action.

The Wage and Hour Division will mark, date, and sign the section of the SF 98 titled “Response to Notice” and return the signed original together with appropriate additional material (wage determination, position/classification descriptions, etc.). The Wage and Hour Division will take one of the following four actions:

(a) Issue and attach applicable wage determination(s); or

(b) Indicate that no wage determination is in effect for the locality of contract performance; or

(c) Indicate that the Service Contract Act is not applicable based on information submitted; or

(d) Return the Notice for additional information (see 22.1008-1).

22.1011-2 Requests for status or expediting of response.

Checking the status or the expediting of wage determination responses shall be made in accordance with contracting agency procedures.

22.1012 Late receipt or nonreceipt of wage determination.

22.1012-1 General.

The Wage and Hour Administrator, generally, will issue a wage determination or revision to it in response to a Notice. The contracting officer shall incorporate the determination or revision in the particular solicitation and contract for which the wage determination was sought.

22.1012-2 Response to timely submission of Notice—no collective bargaining agreement.

(a) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a

nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected.

(b) In sealed bidding, a revision of a wage determination shall not be effective if a collective bargaining agreement does not exist, the revision is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding where a collective bargaining agreement does not exist, a revision of a wage determination received by the contracting agency after award of a new contract or a modification as specified in 22.1007(b) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, the Department of Labor shall be notified and any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) The limitations in paragraphs (b) and (c) of this subsection shall apply only if a timely Notice required in 22.1008-7(a) and (b) has been submitted.

22.1012-3 Response to timely submission of Notice—with collective bargaining agreement.

(a) In sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation (see 52.222-47).

(b) For contractual actions other than sealed bidding, a wage determination or revision based on a new or changed collective bargaining agreement shall not be effective if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in 22.1007(b), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before com-

mencement of the work shall be effective for purposes of the successor contract under section 4(c) of the Act.

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely Notices and notifications required in 22.1008-7 and 22.1010 have been given.

(d) If the contracting officer has not received a response from the Department of Labor within 60 days (or 30 days if a nonrecurring or unknown requirement), the contracting agency shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the solicitation/ contract action should proceed according to the following instructions:

(1) If a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits. The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments in fixed-price type contracts (but see 22.1008-3(e) and 22.1013(a)).

(2) The terms of a new or changed collective bargaining agreement, negotiated by the predecessor contractor during the period of performance of the predecessor contract, will not apply to the successor contract under the conditions set forth in paragraphs (a), (b), and (c) of this subsection.

22.1012-4 Response to late submission of Notice—no collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008-7, and thus has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation does not exist, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall use the latest wage determination or revision, if any, incorporated in the existing contract. If any new or revised wage determination is received later in response to the Notice, the contracting officer shall include it in the solicitation or contract within 30 calendar days of receipt. If the contract has been awarded, the contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating the wage determination or revision. The Administrator, Wage and Hour Division, may require retroactive application of the

wage determination for a contractual action over \$2,500 using more than five service employees. These provisions are not intended to alter the contracting officer's responsibility to make timely submissions as required in 22.1008-7.

22.1012-5 Response to late submission of Notice—with collective bargaining agreement.

If the contracting officer has not filed the Notice within the time limits in 22.1008-7, has not received a response from the Department of Labor, and a successorship/same locality/incumbent collective bargaining agreement situation exists, the contracting officer shall contact the Wage and Hour Division to determine when the wage determination or revision can be expected. If the Department of Labor is unable to provide the wage determination or revision by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate in the solicitation the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, and the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits. If the contract has been awarded, an equitable adjustment following receipt of the wage determination or revision will not be required, since the wage determination or revision will be based on the economic terms of the collective bargaining agreement. The contracting officer may incorporate the wage and fringe benefit terms of the collective bargaining agreement, or the collective bargaining agreement itself, in other contract actions such as the exercise of options in order to facilitate price adjustments for options in fixed-price type contracts (but see 22.1008-3(e) and 22.1013(a)).

22.1013 Review of wage determination.

(a) *Based on incumbent collective bargaining agreement.*
(1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in 22.1021.

(1) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

22.1014 Delay of acquisition dates over 60 days.

If any invitation for bids, request for proposals, bid opening, or commencement of negotiation for a proposed contract for which a wage determination was provided in response to a Notice has been delayed, for whatever reason, more than 60 days from such date as indicated on the submitted Notice, the contracting officer shall, in accordance with agency procedures, contact the Wage and Hour Division for the purpose of determining whether the wage determination issued under the initial submission is still current. Any revision of a wage determination received by the contracting agency as a result of that communication, or upon discovery by the Department of Labor of a delay, shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in 22.1012-2(a) and (b).

22.1015 Discovery of errors by the Department of Labor.

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Act did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at 52.222-41 and any applicable wage determination issued by the Administrator. If the contract is subject to section 10 of the Act (41 U.S.C. 358), the Administrator may require retroactive application of that wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

22.1016 Statement of equivalent rates for Federal hires.

(a) The statement required under the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, (see 22.1006(b)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if 5 U.S.C. 5332 (General Schedule—white collar) and/or 5 U.S.C. 5341 (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

22.1017 Notice of award.

Whenever MMS awards a service contract subject to the Act which may be in excess of \$25,000 and does not report the award to the Federal Procurement Data System, it shall furnish an original and one copy of Standard Form 99, Notice of Award of Contract (see 53.301-99) to the Wage and Hour Division, Employment Standards Administration, Department of Labor, unless it makes other arrangements with the Wage and Hour Division for notifying it of contract awards.

22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Act and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Act and satisfies the notice requirements in paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended.

(c) Attach any applicable wage determination to Publication WH-1313.

22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at 52.222-41, Service Contract Act of 1965, as amended). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) ren-

der a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and handicapped workers are permissible in accordance with paragraph (q) of the clause at 52.222-41, Service Contract Act of 1965, as amended.

22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at 52.222-41, Service Contract Act of 1965, as amended.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

22.1021 Request for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to—

Administrator, Wage and Hour Division
Employment Standards Administration

U.S. Department of Labor
Washington, DC 20210

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

- (1) The number of the wage determinations at issue;
- (2) The name of the contracting agency whose contract is involved;
- (3) A brief description of the services to be performed under the contract;
- (4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;
- (5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;
- (6) Names and addresses (to the extent known) of interested parties; and
- (7) Any other data required by the Administrator.

(c) A request for an arm's length hearing shall include—

- (1) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;
- (2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and
- (3) Names and addresses (to the extent known) of interested parties.

(d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:

- (1) For sealed bid contracts, more than 10 days before the award of the contract; or
- (2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

22.1022 Withholding of contract payments.

Any violations of the clause at 52.222-41, Service Contract Act of 1965, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Assistant Regional Administrator, Wage and Hour Division,

Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Act or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Board of Service Contract Appeals. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

22.1023 Termination for default.

As provided by the Act, any contractor failure to comply with the requirements of the contract clauses related to the Act may be grounds for termination for default (see paragraph (k) of the clause at 52.222-41, Service Contract Act of 1965, as amended).

22.1024 Cooperation with the Department of Labor.

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, inter-

views with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

22.1025 Ineligibility of violators.

A list of persons or firms found to be in violation of the Act is contained in the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the Act, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

22.1026 Disputes concerning labor standards.

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause at 52.222-41, Service Contract Act of 1965, as amended, and not under the clause at 52.233-1, Disputes.

Subpart 22.11—Professional Employee Compensation

22.1101 Applicability.

The Service Contract Act of 1965 was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.

22.1102 Definition.

“Professional employee,” as used in this subpart, means any person meeting the definition of “employee employed in a bona fide . . . professional capacity” given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a professional employee, a person must not only

be a professional but must be involved essentially in discharging professional duties.

22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at 52.222-46, Evaluation of Compensation for Professional Employees, in solicitations for negotiated service contracts when the contract amount is expected to exceed \$500,000 and the service to be provided will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employees compensation may be assessed adversely as one of the factors considered in making an award.

Subpart 22.12—[Reserved]

Subpart 22.13—Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

22.1300 Scope of subpart.

This subpart prescribes policies and procedures for implementing the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (38 U.S.C. 4211 and 4212) (the Act); the regulations of the Secretary of Labor (41 CFR Part 60-250 and Part 61-250); and the Veterans Employment Opportunities Act of 1998, Public Law 105-339.

22.1301 Definition.

"United States," as used in this subpart, means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

22.1302 Policy.

(a) Contractors and subcontractors, when entering into contracts or subcontracts subject to the Act, must—

(1) List all employment openings, with the appropriate local employment service office except for—

(i) Executive and top management positions;

(ii) Positions to be filled from within the contractor's organization; and

(iii) Positions lasting three days or less.

(2) Take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status.

(b) Except for contracts for commercial items or contracts that do not exceed the simplified acquisition threshold, contracting officers must not obligate or expend funds appropriated for the agency for a fiscal year to enter into a contract for the procurement of personal property and nonpersonal services (including construction) with a contractor that has not submitted a required annual Form VETS-100, Federal Contractor Veterans' Employment Report (VETS-100 Report), with respect to the preceding fiscal year if the contractor was subject to the reporting requirements of 38 U.S.C. 4212(d) for that fiscal year.

22.1303 Applicability.

(a) The Act applies to all contracts and subcontracts for personal property and nonpersonal services (including construction) of \$25,000 or more except as waived by the Secretary of Labor.

(b) The requirements of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in any contract with a State or local government (or any agency, instrumen-

tality, or subdivision) do not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

(c) The Act requires submission of the VETS-100 Report in all cases where the contractor or subcontractor has received an award of \$25,000 or more, except for awards to State and local governments, and foreign organizations where the workers are recruited outside of the United States.

22.1304 Procedures.

To verify if a proposed contractor is current with its submission of the VETS-100 Report, the contracting officer may—

(a) Query the Department of Labor's VETS-100 Database via the Internet at <http://www.vets100.cudenver.edu/vets100search.htm> using the validation code "vets" to proceed with the search in the database; or

(b) Contact the VETS-100 Reporting Systems via e-mail at verify@vets100.com for confirmation, if the proposed contractor represents that it has submitted the VETS-100 Report and is not listed in the database.

22.1305 Waivers.

(a) The Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), may waive any or all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans for—

(1) Any contract if a waiver is in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b) The head of the agency may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security. Upon making such a determination, the head of the agency must notify the Deputy Assistant Secretary of Labor in writing within 30 days.

(c) The contracting officer must submit requests for waivers in accordance with agency procedures.

(d) The Deputy Assistant Secretary of Labor may withdraw an approved waiver for a specific contract or group of contracts to be awarded, when in the Deputy's judgment such action is necessary to achieve the purposes of the Act. The withdrawal does not apply to awarded contracts. For procurements entered into by sealed bidding, such withdrawal does not apply unless the withdrawal is made more than 10 calendar days before the date set for the opening of bids.

22.1306 Department of Labor notices and reports.

(a) The contracting officer must furnish to the contractor appropriate notices for posting when they are prescribed by the Deputy Assistant Secretary of Labor (see http://www2.dol.gov/dol/esa/public/ofcp_org.htm).

(b) The Act requires contractors and subcontractors to submit a report at least annually to the Secretary of Labor regarding employment of special disabled veterans, veterans of the Vietnam era, and other eligible veterans unless all of the terms of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, have been waived (see 22.1305). The contractor and subcontractor must use Form VETS-100, Federal Contractor Veterans' Employment Report, to submit the required reports.

22.1307 Collective bargaining agreements.

If performance under the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, may necessitate a revision of a collective bargaining agreement, the contracting officer must advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer may discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1308 Complaint procedures.

Following agency procedures, the contracting office must forward any complaints received about the administration of the Act to the Veterans' Employment and Training Service of the Department of Labor, or through the local Veterans' Employment Representative or designee, at the local State employment office. The Deputy Assistant Secretary of Labor is responsible for investigating complaints.

22.1309 Actions because of noncompliance.

The contracting officer must take necessary action as soon as possible upon notification by the appropriate agency official to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans. These sanctions (see 41 CFR 60-250.66) may include—

- (a) Withholding payments;
- (b) Termination or suspension of the contract; or
- (c) Debarment of the contractor.

22.1310 Solicitation provision and contract clauses.

(a)(1) Insert the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts if the expected value is \$25,000 or more, except when—

- (i) Work is performed outside the United States by employees recruited outside the United States; or
- (ii) The Deputy Assistant Secretary of Labor has waived, in accordance with 22.1305(a) or the head of the agency has waived, in accordance with 22.1305(b) all of the terms of the clause.

(2) If the Deputy Assistant Secretary of Labor or the head of the agency waives one or more (but not all) of the terms of the clause, use the basic clause with its Alternate I.

(b) Insert the clause at 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans, in solicitations and contracts containing the clause at 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

(c) Insert the provision at 52.222-38, Compliance with Veterans' Employment Reporting Requirements, in solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

Subpart 22.14—Employment of Workers with Disabilities

22.1400 [Reserved]

22.1401 Policy.

Government contractors, when entering into contracts subject to the Act, are required to take affirmative action to employ, and advance in employment, qualified individuals with disabilities, without discrimination based on their physical or mental disability.

22.1402 Applicability.

(a) This policy applies to all Government contracts in excess of \$10,000 for supplies and services (including construction). The clause at 52.222-36, Affirmative Action for Workers with Disabilities, implements the policy.

(b) The requirements of the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in any contract with a State or local government (or any agency, instrumentality, or subdivision) shall not apply to any agency, instrumentality, or subdivision of that government that does not participate in work on or under the contract.

22.1403 Waivers.

(a) The Public Printer may waive any or all of the terms of the clause at 52.222-36, Affirmative Action for Workers with Disabilities, for—

(1) Any contract if a waiver is deemed to be in the national interest; or

(2) Groups or categories of contracts if a waiver is in the national interest and it is—

(i) Impracticable to act on each request individually; and

(ii) Determined that the waiver will substantially contribute to convenience in administering the Act.

(b)(1) The Public Printer may waive any requirement in this subpart when it is determined that the contract is essential to the national security, and that its award without complying with such requirements is necessary to the national security.

(c) The contracting officer shall submit requests for waivers in accordance with agency procedures.

(d) A waiver granted for a particular class of contracts may be withdrawn for any contract within that class whenever considered necessary by the Public Printer. The withdrawal shall not apply to contracts awarded before the withdrawal. The withdrawal shall not apply to solicitations under any means of sealed bidding unless it is made more than 10 days before the date set for bid opening.

22.1404 Department of Labor notices.

The contracting officer shall furnish to the contractor appropriate notices that state the contractor's obligations and the rights of individuals with disabilities. The contracting officer may obtain these notices from the Office of Federal Contract Compliance Programs (OFCCP) regional office.

22.1405 Collective bargaining agreements.

If performance under the clause at 52.222-36, Affirmative Action for Workers with Disabilities, may necessitate a revision of a collective bargaining agreement, the contracting officer shall advise the affected labor unions that the Department of Labor will give them appropriate opportunity to present their views. However, neither the contracting officer nor any representative of the contracting officer shall discuss with the contractor or any labor representative any aspect of the collective bargaining agreement.

22.1406 [Reserved]

22.1407 Actions because of noncompliance.

The contracting officer shall take necessary action, as soon as possible upon notification by the appropriate agency official, to implement any sanctions imposed on a contractor by the Department of Labor for violations of the clause at 52.222-36, Affirmative Action for Workers with Disabilities. These sanctions (see 41 CFR 60-741.66) may include—

(a) Withholding from payments otherwise due;

(b) Termination or suspension of the contract; or

(c) Debarment of the contractor.

22.1408 Contract clause.

(a) The contracting officer shall insert the clause at 52.222-36, Affirmative Action for Workers with Disabilities, in solicitations and contracts that exceed \$10,000 or are expected to exceed \$10,000, except when—

(1) Work is to be performed outside the United States by employees recruited outside the United States (for the purpose of this subpart, "United States" includes the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island); or

(2) The Public Printer has waived, in accordance with 22.1403(a) or 22.1403(b) all the terms of the clause.

(b) If the Public Printer waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), use the basic clause with its Alternate I.

Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

22.1500 Scope.

This subpart applies to acquisitions of supplies that exceed the micro-purchase threshold.

22.1501 Definitions.

As used in this subpart—

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

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

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

“List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor” means the list published by the Department of Labor in accordance with E.O. 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

22.1502 Policy.

MMS must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor (19 U.S.C. 1307, 29 U.S.C. 201, *et seq.*, and 41 U.S.C. 35, *et seq.*). MMS should make every effort to avoid acquiring such products.

22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(a) When issuing a solicitation for supplies expected to exceed the micro-purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) (www.dol.gov/ilab/) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more (see 25.405);

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);

(3) Mexico, and the anticipated value of the acquisition is \$56,190 or more (see 25.405); or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$169,000 or more (see 25.403(b)).

(c) Except as provided in paragraph (b) of this section, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

22.1504 Violations and remedies.

(a) “Violations.” The Government may impose remedies set forth in paragraph (b) of this section for the following vio-

lations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of end products) (see 22.1503):

(1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.

(2) The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) "Remedies." (1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in Subpart 9.4.

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in GPO Instruction 110.11B.

22.1505 Solicitation provision and contract clause.

(a) Except as provided in paragraph (b) of 22.1503, insert the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial items that include the provision at 52.212-3, Offeror Representations and Certifications—Commercial Items. The contracting officer must identify in paragraph (b) of the provision at 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at 52.212-3, any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed \$25,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at 22.1503(b), in accordance with the specified thresholds.

(b) Insert the clause at 52.222-19, Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase thresholds.

* * * * *

FAC 2001-02 FEBRUARY 19, 2002

PART 23—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY
TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Sec.

23.000 Scope.

Subpart 23.1—[Reserved]

**Subpart 23.2—Energy and Water Efficiency and
Renewable Energy**

23.200 Scope.

23.201 Authorities.

23.202 Policy.

23.203 Energy-efficient products.

23.204 Energy-savings performance contracts.

**Subpart 23.3—Hazardous Material
Identification and Material Safety Data**

23.300 Scope of subpart.

23.301 Definition.

23.302 Policy.

23.303 Contract clause.

Subpart 23.4—Use of Recovered Materials

23.400 Scope of subpart.

23.401 Definition.

23.402 Authorities.

23.403 Policy.

23.404 Agency affirmative procurement programs.

23.405 Procedures.

23.406 Solicitation provision and contract clause.

Subpart 23.5—[Reserved]

Subpart 23.6—Notice of Radioactive Material

23.601 Requirements.

23.602 Contract clause.

**Subpart 23.7—Contracting for Environmentally
Preferable Products and Services**

23.700 Scope.

23.701 Definition.

23.702 Authorities.

23.703 Policy.

23.704 Application to Government-owned or -leased
facilities.

23.705 Contract clause.

Subpart 23.8—Ozone-Depleting Substances

23.800 Scope of subpart.

23.801 Authorities.

23.802 [Reserved]

23.803 Policy.

23.804 Contract clauses.

**Subpart 23.9—Toxic Chemical Release
Reporting**

23.901 [Reserved]

23.902 General.

23.903 Applicability.

23.904 Definition.

23.905 Policy.

23.906 Requirements.

23.907 Solicitation provision and contract clause.

Subpart 23.10—[Reserved]

This page intentionally left blank.

23.000 Scope.

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by—

- (a) Controlling pollution;
- (b) Managing energy and water use in Government facilities efficiently;

(c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy- and water-efficient products and services, environmentally preferable products, and products that use recovered materials; and

(e) Requiring contractors to identify hazardous materials.

Subpart 23.1—[Reserved]

Subpart 23.2—Energy and Water Efficiency and Renewable Energy

23.200 Scope.

- (a) This subpart prescribes policies and procedures for—
- (1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and
 - (2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the United States, its possessions and territories, Puerto Rico, and the Northern Mariana Islands. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

23.201 Authorities.

- (a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).
- (b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8262g, and 8287).

23.202 Policy.

The Government's policy is to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products, and help foster markets for emerging technologies. This policy extends to all acquisitions, including those below the simplified acquisition threshold.

23.203 Energy-efficient products.

- (a) If life-cycle cost-effective and available—
- (1) When acquiring energy-using products, contracting officers must purchase ENERGY STAR® or other energy-efficient products designated by the Department of Energy's Federal Energy Management Program (FEMP); or

(2) When contracting for services that will include the provision of energy-using products, including contracts for design, construction, renovation, or maintenance of a public building, the specifications must require that the contractor provide ENERGY STAR or other energy-efficient products.

(b) Information is available via the Internet on—

- (1) ENERGY STAR® at <http://www.energystar.gov/>; and
- (2) FEMP at <http://www.eren.doe.gov/femp/procurement>.

23.204 Energy-savings performance contracts.

(a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, requires an agency to make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

(b)(1) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(2) Except as provided in 10 CFR 436.34, ESPC's are subject to Subpart 17.1.

(c) To solicit and award an ESPC, the contracting officer—

- (1) Must use the procedures, selection method, and terms and conditions provided in 10 CFR part 436, Subpart B; at <http://www.eren.doe.gov/femp/resources/legislation.html>; and
- (2) May use the "Qualified List" of energy service companies established by the Department of Energy and other agencies.

Subpart 23.3—Hazardous Material Identification and Material Safety Data

23.300 Scope of subpart.

This subpart prescribes policies and procedures for acquiring deliverable items, other than ammunition and explosives, that require the furnishing of data involving hazardous materials. Agencies may prescribe special procedures for ammunition and explosives.

23.301 Definition.

“Hazardous material” is defined in the latest version of Federal Standard No. 313 (Federal Standards are sold to the public and Federal agencies through—

General Services Administration
Specifications Unit (3FBP-W)
7th & D Sts. SW
Washington, DC 20407.

23.302 Policy.

(a) The Occupational Safety and Health Administration (OSHA) is responsible for issuing and administering regulations that require Government activities to apprise their employees of—

- (1) All hazards to which they may be exposed;
- (2) Relative symptoms and appropriate emergency treatment; and
- (3) Proper conditions and precautions for safe use and exposure.

(b) To accomplish this objective, it is necessary to obtain certain information relative to the hazards which may be introduced into the workplace by the supplies being acquired. Accordingly, offerors and contractors are required to submit

hazardous materials data whenever the supplies being acquired are identified as hazardous materials. The latest version of Federal Standard No. 313 (Material Safety Data Sheet, Preparation and Submission of) includes criteria for identification of hazardous materials.

(c) Hazardous material data (Material Safety Data Sheets (MSDS)) are required—

(1) As specified in the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract);

(2) For any other material designated by a Government technical representative as potentially hazardous and requiring safety controls.

(d) MSDS's must be submitted—

(1) By the apparent successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

(2) For agencies other than the Department of Defense, again by the contractor with the supplies at the time of delivery.

(e) The contracting officer shall provide a copy of all MSDS's received to the safety officer or other designated individual.

23.303 Contract clause.

(a) The contracting officer shall insert the clause at 52.223-3, Hazardous Material Identification and Material Safety Data, in solicitations and contracts if the contract will require the delivery of hazardous materials as defined in 23.301.

(b) If the contract is awarded by an agency other than the Department of Defense, the contracting officer shall use the clause at 52.223-3 with its Alternate I.

Subpart 23.4—Use of Recovered Materials

23.400 Scope of subpart.

This subpart prescribes policies and procedures for acquiring Environmental Protection Agency (EPA)-designated products through affirmative procurement programs required by the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6962).

23.401 Definition.

“EPA-designated product,” as used in this subpart, means a product—

- (1) That is or can be made with recovered material;
- (2) That is listed by EPA in a procurement guideline (40 CFR part 247); and
- (3) For which EPA has provided purchasing recommendations in a related Recovered Materials Advisory Notice (RMAN).

23.402 Authorities.

(a) The Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6962, requires agencies responsible for drafting or reviewing specifications used in agency acquisitions to—

- (1) Eliminate from those specifications any requirement excluding the use of recovered materials or requiring products to be manufactured from virgin materials; and
- (2) Require, for EPA-designated products, using recovered materials to the maximum extent practicable without jeopardizing the intended end use of the item.

(b) RCRA also requires—

- (1) EPA to prepare guidelines on the availability, sources, and potential uses of recovered materials and associated products, including solid waste management services; and
- (2) Agencies to develop and implement affirmative procurement programs for EPA-designated products within 1 year after EPA's designation.

(c) Executive Order 13101 requires that the agency head—

- (1) Work to increase and expand markets for recovered materials through greater Government preference and demand for such products consistent with the demands of efficiency and cost-effectiveness; and
- (2) Develop and implement affirmative procurement programs in accordance with direction in RCRA and the Executive order.

23.403 Policy.

Government policy on the use of recovered materials considers cost, availability of competition, and performance. The objective is to acquire competitively, in a cost-effective manner, products that meet reasonable performance requirements

and that are composed of the highest percentage of recovered materials practicable.

23.404 Agency affirmative procurement programs.

(a) For EPA-designated products, an agency must establish an affirmative procurement program, if the agency's purchases meet the threshold in 23.405(a). Technical or requirements personnel and procurement personnel are responsible for the preparation, implementation, and monitoring of affirmative procurement programs. Agency affirmative procurement programs must include—

- (1) A recovered materials preference program;
- (2) An agency promotion program;
- (3) A program for requiring reasonable estimates, certification, and verification of recovered material used in the performance of contracts; and
- (4) Annual review and monitoring of the effectiveness of the program.

(b) Agency affirmative procurement programs must require that 100 percent of purchases of EPA-designated products contain recovered material, unless the item cannot be acquired—

- (1) Competitively within a reasonable time frame;
- (2) Meeting appropriate performance standards; or
- (3) At a reasonable price.

(c) Agency affirmative procurement programs must provide guidance for purchases of EPA-designated products at or below the micro-purchase threshold.

23.405 Procedures.

(a) These procedures apply to all agency acquisitions of EPA-designated products, including micro-purchases, if—

- (1) The price of the product exceeds \$10,000; or
- (2) The aggregate amount paid for products, or for functionally equivalent products, in the preceding fiscal year was \$10,000 or more. RCRA requires that an agency include micro-purchases in determining if the aggregate amount paid was \$10,000 or more. However, it is not recommended that an agency track micro-purchases unless it intends to claim an exemption from the requirement to establish an affirmative procurement program in the following fiscal year.

(b) Contracting officers should refer to EPA's list of EPA-designated products (available via the Internet at <http://www.epa.gov/cpg/>) and to their agencies' affirmative procurement programs when purchasing supplies that contain recovered material or services that could include supplies that contain recovered material.

(c) The contracting officer must place in the contract file a written justification if an acquisition of EPA-designated products above the micro-purchase threshold does not contain recovered material. If the agency has designated an Environmental Executive, the contracting officer must give a copy of the written justification to that official. The contracting

officer must base the justification on the inability to acquire the product—

- (1) Competitively within a reasonable period of time;
- (2) At reasonable prices; or
- (3) To reasonable performance standards in the specifications, provided a written determination by technical or requirements personnel of the performance standard's reasonableness is included with the justification. The technical and requirements personnel must base their determination on National Institute of Standards and Technology guidelines, if available.

(d) Agencies must establish procedures for consolidating and reporting contractor estimates required by the clause at

52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that are for, or specify the use of, recovered materials.

(b) Insert the clause at 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products, in solicitations and contracts exceeding \$100,000 that include the provision at 52.223-4. If technical personnel advise that estimates can be verified, use the clause with its Alternate I.

Subpart 23.5—[Reserved]

Subpart 23.6—Notice of Radioactive Material**23.601 Requirements.**

(a) The clause at 52.223-7, Notice of Radioactive Materials, requires the contractor to notify the contracting officer prior to delivery of radioactive material.

(b) Upon receipt of the notice, the contracting officer shall notify receiving activities so that appropriate safeguards can be taken.

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

(d) The contracting officer is required to specify in the clause at 52.223-7, the number of days in advance of delivery that the contractor will provide notification. The determination of the number of days should be done in coordination

with the installation/facility radiation protection officer (RPO). The RPO is responsible for insuring the proper license, authorization or permit is obtained prior to receipt of the radioactive material.

23.602 Contract clause.

The contracting officer shall insert the clause at 52.223-7, Notice of Radioactive Materials, in solicitations and contracts for supplies which are, or which contain— (a) radioactive material requiring specific licensing under regulations issued pursuant to the Atomic Energy Act of 1954; or (b) radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such supplies include, but are not limited to, aircraft, ammunition, missiles, vehicles, electronic tubes, instrument panel gauges, compasses and identification markers.

Subpart 23.7—Contracting for Environmentally Preferable Products and Services

23.700 Scope.

This subpart prescribes policies for acquiring environmentally preferable products and services.

23.701 Definition.

“Biobased product,” as used in this subpart, means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

23.702 Authorities.

- (a) Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901, *et seq.*).
- (b) National Energy Conservation Policy Act (42 U.S.C. 8262g).
- (c) Pollution Prevention Act of 1990 (42 U.S.C. 13101, *et seq.*).

23.703 Policy.

MMS must—

- (a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services; and
- (b) Employ acquisition strategies that affirmatively implement the following environmental objectives:
 - (1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

- (2) Promote energy-efficiency and water conservation.
- (3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).
- (4) Promote the use of nonhazardous and recovered materials.
- (5) Realize life-cycle cost savings.
- (6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.
- (7) Consider the use of biobased products.

23.704 Application to Government-owned or -leased facilities.

Executive Order 13101, Section 701, requires that contracts for contractor operation of a Government-owned or -leased facility and contracts for support services at a Government-owned or -operated facility include provisions that obligate the contractor to comply with the requirements of the order. Compliance includes developing programs to promote and implement cost-effective waste reduction and affirmative procurement programs required by 42 U.S.C. 6962 for all products designated in EPA's Comprehensive Procurement Guideline (40 CFR part 247).

23.705 Contract clause.

Insert the clause at 52.223-10, Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

Subpart 23.8—Ozone-Depleting Substances**23.800 Scope of subpart.**

This subpart sets forth policies and procedures for the acquisition of items which contain, use, or are manufactured with ozone-depleting substances.

23.801 Authorities.

(a) Title VI of the Clean Air Act (42 U.S.C. 7671, *et seq.*).

(b) Environmental Protection Agency (EPA) regulations, Protection of Stratospheric Ozone (40 CFR part 82).

23.802 [Reserved]**23.803 Policy.**

(a) It is the policy of the Federal Government that Federal agencies—

(1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone; and

(2) Give preference to the procurement of alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by lessening the depletion of ozone in the upper atmosphere.

(b) In preparing specifications and purchase descriptions, and in the acquisition of supplies and services, agencies shall ensure that acquisitions—

(1) Comply with the requirements of Title VI of the Clean Air Act and 40 CFR 82.84(a)(2), (3), (4), and (5); and

(2) Substitute safe alternatives to ozone-depleting substances, as identified under 42 U.S.C. 7671k, to the maximum extent practicable, as provided in 40 CFR 82.84(a)(1), except in the case of Class I substances being used for specified essential uses, as identified under 40 CFR 82.4(r).

23.804 Contract clauses.

Except for contracts to be performed outside the United States, its possessions, and Puerto Rico, the contracting officer shall insert the clause at:

(a) 52.223-11, Ozone-Depleting Substances, in solicitations and contracts for ozone-depleting substances or for supplies that may contain or be manufactured with ozone-depleting substances.

(b) 52.223-12, Refrigeration Equipment and Air Conditioners, in solicitations and contracts for services when the contract includes the maintenance, repair, or disposal of any equipment or appliance using ozone-depleting substances as a refrigerant, such as air conditioners, including motor vehicles, refrigerators, chillers, or freezers.

Subpart 23.9—Toxic Chemical Release Reporting

23.901 [Reserved]

23.902 General.

(a) The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act of 1990 (PPA) established programs to protect public health and the environment by providing the public with important information on the toxic chemicals being released by manufacturing facilities into the air, land, and water in its communities.

(b) Under EPCRA section 313 (42 U.S.C. 11023), and PPA section 6607 (42 U.S.C. 13106), the owner or operator of certain manufacturing facilities is required to submit annual reports on toxic chemical releases and waste management activities to the Environmental Protection Agency (EPA) and the States.

23.903 Applicability.

(a) This subpart applies to all competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts.

(b) This subpart does not apply to—

(1) Acquisitions of commercial items as defined in Part 2; or

(2) Contractor facilities located outside the United States. (The United States, as used in this subpart, includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the United States has jurisdiction.)

23.904 Definition.

“Toxic chemicals,” as used in this subpart, means reportable chemicals currently listed and added pursuant to EPCRA sections 313(c), (d) and (e), except for those chemicals deleted by EPA using the statutory criteria of EPCRA, sections 313(d) and (e).

23.905 Policy.

(a) It is the policy of the Government to purchase supplies and services that have been produced with a minimum adverse impact on community health and the environment.

(b) MMS, to the greatest extent practicable, shall contract with companies that report in a public manner on toxic chemicals released to the environment.

23.906 Requirements.

(a) Solicitations for competitive contracts expected to exceed \$100,000 (including all options) include, to the maxi-

imum extent practicable, as an award eligibility criterion, a certification by the offeror that, if awarded a contract, either—

(1) As the owner or operator of facilities to be used in the performance of the contract that are subject to Form R filing and reporting requirements, the offeror will file, and will continue to file throughout the life of the contract, for such facilities, the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313(a) and (g) and PPA section 6607; or

(2) Facilities to be used in the performance of the contract are exempt from Form R filing and reporting requirements because the facilities—

(i) Do not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(ii) Do not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(iii) Do not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(iv) Do not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(v) Are not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(b) A determination that it is not practicable to include the solicitation provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in a solicitation or class of solicitations shall be approved by a procurement official at a level no lower than the head of the contracting activity. Prior to making such a determination for a solicitation or class of solicitations with an estimated value in excess of \$500,000 (including all options), the agency shall consult with the Environmental Protection Agency, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxic Substances (Mail Code 7408), Washington, DC 20460.

(c) Award shall not be made to offerors who do not certify in accordance with paragraph (a) of this section when the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, is included in the solicitation. If facilities to be used by the offeror in the performance of the contract are not subject to Form R filing and reporting requirements and the offeror fails to check the appropriate box(es) in 52.223-13,

Certification of Toxic Chemical Release Reporting, such failure shall be considered a minor informality or irregularity.

(d) The contracting officer shall cooperate with EPA representatives and provide such advice and assistance as may be required to aid EPA in the performance of its responsibilities under E.O. 12969.

(e) EPA, upon determining that a contractor is not filing the necessary forms or is filing incomplete information, may recommend to the head of the contracting activity that the contract be terminated for convenience. The head of the contracting activity shall consider the EPA recommendation and determine if termination or some other action is appropriate.

23.907 Solicitation provision and contract clause.

Except for acquisitions of commercial items as defined in Part 2, the contracting officer shall—

(a) Insert the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, in all solicitations for competitive contracts expected to exceed \$100,000 (including all options) and competitive 8(a) contracts, unless it has been determined in accordance with 23.906(b) that to do so is not practicable; and

(b) When the solicitation contains the provision at 52.223-13, Certification of Toxic Chemical Release Reporting, insert the clause at 52.223-14, Toxic Chemical Release Reporting, in the resulting contract, if the contract is expected to exceed \$100,000 (including all options).

Subpart 23.10—[Reserved]

* * * * *

PART 24—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

24.000 Scope of part.

Subpart 24.1—[Reserved]

Subpart 24.2—Freedom of Information Act

24.201 [Reserved]

24.202 [Reserved]

24.203 Policy.

This page intentionally left blank.

24.000 Scope of part.

Contracts of the GPO are not subject to the Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of Information Act (5

U.S.C. 552, as amended). This part establishes GPO policy for the release of procurement information to the public.

Subpart 24.1—[Reserved]

Subpart 24.2—Freedom of Information Act

24.201 [Reserved].

24.202 [Reserved]

24.203 Policy.

(a) GPO Instruction 905.3A, Policy and Procedure Concerning Public Access to Information and Records of the GPO establishes the procedures and responsibilities for the release of information.

(b) Contracting officers may receive requests for records that may be exempted from mandatory public disclosure. The exemptions most often applicable are those relating to classified information, to trade secrets and confidential commercial or financial information, to interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual. Since these requests often involve complex issues requiring an in-depth knowledge of a large and increasing body of court rulings and policy guidance, contracting officers are cautioned to comply with GPO Instruction 905.3A and to obtain necessary guidance from the the Office of General Counsel.

* * * * *

PART 25—FOREIGN ACQUISITION

Sec.

- 25.000 Scope of part.
- 25.001 General.
- 25.002 Applicability of subparts.
- 25.003 Definitions.

Subpart 25.1—Buy American Act—Supplies

- 25.100 Scope of subpart.
- 25.101 General.
- 25.102 Policy.
- 25.103 Exceptions.
- 25.104 Nonavailable articles.
- 25.105 Determining reasonableness of cost.

**Subpart 25.2—Buy American Act—
Construction Materials**

- 25.200 Scope of subpart.
- 25.201 Policy.
- 25.202 Exceptions.
- 25.203 Preaward determinations.
- 25.204 Evaluating offers of foreign construction material.
- 25.205 Postaward determinations.
- 25.206 Noncompliance.

Subpart 25.3—[Reserved]

Subpart 25.4—[Reserved]

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

- 25.501 General.
- 25.502 Application.
- 25.503 Group offers.
- 25.504 Evaluation examples.

- 25.504-1 Buy American Act.
- 25.504-2 [Reserved]
- 25.504-3 [Reserved]
- 25.504-4 Group award basis.

Subpart 25.6—[Reserved]

Subpart 25.7—Prohibited Sources

- 25.701 Restrictions.
- 25.702 Source of further information.

**Subpart 25.8—Other International Agreements
and Coordination**

- 25.801 General.
- 25.802 Procedures.

Subpart 25.9—Customs and Duties

- 25.900 Scope of subpart.
- 25.901 Policy.
- 25.902 Procedures.
- 25.903 Exempted supplies.

**Subpart 25.10—Additional Foreign Acquisition
Regulations**

- 25.1001 Waiver of right to examination of records.
- 25.1002 Use of foreign currency.

**Subpart 25.11—Solicitation Provisions and
Contract Clauses**

- 25.1101 Acquisition of supplies.
- 25.1102 Acquisition of construction.
- 25.1103 Other provisions and clauses.

This page intentionally left blank.

25.000 Scope of part.

This part provides policies and procedures for acquiring foreign supplies, services, and construction materials. It implements the Buy American Act, trade agreements, and other laws and regulations.

25.001 General.

(a) The Buy American Act—

(1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see Subpart 25.1); and

(2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see Subpart 25.2).

(b) The restrictions in the Buy American Act are not applicable in acquisitions subject to certain trade agreements (see Subpart 25.4). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers.

Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in Subpart 25.4.

(c) The test to determine the country of origin for an end product under the trade agreements is different from the test to determine the country of origin for an end product under the Buy American Act (see the various country “end product” definitions in 25.003). The Buy American Act uses a two-part test to define a “domestic end product” (manufacture in the United States and a formula based on cost of domestic components). Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

25.002 Applicability of subparts.

The following table shows the applicability of the subparts. Subpart 25.5 provides comprehensive procedures for offer evaluation and examples.

SUBPART	SUPPLIES FOR USE		CONSTRUCTION		SERVICES PERFORMED	
	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.
25.1 Buy American Act—Supplies	X	—	—	—	—	—
25.2 Buy American Act—Construction Materials	—	—	X	—	—	—
25.3 [Reserved]	—	—	—	—	—	—
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 Trade Sanctions	X	X	X	X	X	X
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

25.003 Definitions.

As used in this part—

“Canadian end product” means an article that—

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

Canada; or

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

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

“Caribbean Basin country end product”—

(1) Means an article that—

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

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

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

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

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

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

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

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

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:

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

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

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

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

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

“Civil aircraft and related articles” means—

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

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

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

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

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

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

“Cost of components” means—

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

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

“Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

“Designated country” means any of the following countries:

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

“Designated country end product” means an article that—

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

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

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

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Domestic end product” means—

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

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

“Domestic offer” means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

“Eligible offer” means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

“Eligible product” means a foreign end product that is not subject to discriminatory treatment under the Buy American Act due to applicability of a trade agreement to a particular acquisition.

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

“Foreign construction material” means a construction material other than a domestic construction material.

“Foreign contractor” means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

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

“Foreign offer” means any offer other than a domestic offer.

“Israeli end product” means an article that—

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

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

“Mexican end product” means an article that—

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

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

“Noneligible offer” means an offer of a noneligible product.

“Noneligible product” means a foreign end product that is not an eligible product.

“North American Free Trade Agreement country” means Canada or Mexico.

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

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

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

“Sanctioned European Union country construction” means construction to be performed in a sanctioned European Union member state.

“Sanctioned European Union country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

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

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of these incidental services does not exceed that of the article itself.

“Sanctioned European Union country services” means services to be performed in a sanctioned European Union member state.

“Sanctioned European Union member state” means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

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

Subpart 25.1—Buy American Act—Supplies

25.100 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a - 10d) and Executive Order 10582, December 17, 1954. It applies to supplies acquired for use in the United States, if—

(a) The supply contract exceeds the micro-purchase threshold; or

(b) The supply portion of a contract for services that involves the furnishing of supplies (*e.g.*, lease) exceeds the micro-purchase threshold.

25.101 General.

(a) The Buy American Act restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American Act uses a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components.

(b) The Buy American Act applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at 25.103. The unreasonable cost exception is implemented through the use of an evaluation factor

applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in Subpart 25.5.

25.102 Policy.

Except as provided in 25.103, acquire only domestic end products for public use inside the United States.

25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American Act:

(a) *Public interest.* The Public Printer may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* (1) A nonavailability determination has been made for the articles listed in 25.104.

(2)(i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the non-availability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201-1 in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsisized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with 25.105 and Subpart 25.5.

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

25.104 Nonavailable articles.

(a) The following articles have been determined to be non-available in accordance with 25.103(b):

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films; not printed in the United States and for which domestic editions are not available.

Brazil nuts, unroasted

Cadmium, ores and flue dust.

Calcium cyanamide.

Capers.

Cashew nuts.

Castor beans and castor oil.

Chalk, English.

Chestnuts.

Chicle.

Chrome ore or chromite.

Cinchona bark.

Cobalt, in cathodes, rondelles, or other primary ore and metal forms.

Cocoa beans.

Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.

Coffee, raw or green bean.

Colchicine alkaloid, raw.

Copra.

Cork, wood or bark and waste.

Cover glass, microscope slide.

Crane rail (85-pound per foot).

Cryolite, natural.

Dammar gum.

Diamonds, industrial, stones and abrasives.

Emetine, bulk.

Ergot, crude.

Erythrityl tetranitrate.

Fair linen, altar.

Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.

Goat and kidskins.

Graphite, natural, crystalline, crucible grade.

Hand file sets (Swiss pattern).

Handsewing needles.

Hemp yarn.

Hog bristles for brushes.

Hyoscine, bulk.

Ipecac, root.

Iodine, crude.

Kaurigum.

Lac.

Leather, sheepskin, hair type.

Lavender oil.
 Manganese.
 Menthol, natural bulk.
 Mica.
 Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).
 Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.
 Nitroguanidine (also known as picrite).
 Nux vomica, crude.
 Oiticica oil.
 Olive oil.
 Olives (green), pitted or unpitted, or stuffed, in bulk.
 Opium, crude.
 Oranges, mandarin, canned.
 Petroleum, crude oil, unfinished oils, and finished products.
 Pine needle oil.
 Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.
 Pyrethrum flowers.
 Quartz crystals.
 Quebracho.
 Quinidine.
 Quinine.
 Rabbit fur felt.
 Radium salts, source and special nuclear materials.
 Rosettes.
 Rubber, crude and latex.
 Rutile.
 Santonin, crude.
 Secretin.
 Shellac.
 Silk, raw and unmanufactured.
 Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.
 Spices and herbs, in bulk.
 Sugars, raw.
 Swords and scabbards.
 Talc, block, steatite.
 Tantalum.
 Tapioca flour and cassava.
 Tartar, crude; tartaric acid and cream of tartar in bulk.
 Tea in bulk.
 Thread, metallic (gold).
 Thyme oil.
 Tin in bars, blocks, and pigs.
 Triprolidine hydrochloride.
 Tungsten.

Vanilla beans.
 Venom, cobra.
 Wax, carnauba.
 Wire glass.
 Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.
 Yarn, 50 Denier rayon.

(b) The determination in paragraph (a) of this section does not apply if the contracting officer learns before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available quantities of a satisfactory quality. The contracting officer must amend the solicitation if purchasing the article, or if purchasing an end product that could contain such an article as a component, and must specify in all new solicitations that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components. In addition, the contracting officer must submit a copy of supporting documentation to the appropriate council identified in 1.201-1 in accordance with agency procedures, for possible removal of the article from the list.

25.105 Determining reasonableness of cost.

(a) The contracting officer—

- (1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and
- (2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under Subpart 25.4.

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American Act apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

- (1) 6 percent, if the lowest domestic offer is from a large business concern; or
- (2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see Subpart 19.5).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with para-

graph (a) or (b) of this section. (See evaluation procedures at Subpart 25.5.)

**Subpart 25.2—Buy American Act—
Construction Materials**

25.200 Scope of subpart.

This subpart implements the Buy American Act (41 U.S.C. 10a - 10d) and Executive Order 10582, December 17, 1954. It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

25.201 Policy.

Except as provided in 25.202, use only domestic construction materials in construction contracts performed in the United States.

25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may acquire foreign construction materials without regard to the restrictions of the Buy American Act:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at 25.104(a) and the procedures at 25.104(b) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with 25.204.

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$6,481,000 or more, see 25.403. If the acquisition value is \$7,304,733 or more, also see 25.405.

25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American Act for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either 52.225-

10 or 52.225-12, whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either 52.225-9 or 52.225-11, whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at 52.225-9, paragraph (b)(2), or 52.225-11, paragraph (b)(3), or excepted under the Trade Agreements Act or NAFTA (paragraph (b)(2) of 52.225-11), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of 52.225-9, or paragraph (b)(3) of 52.225-11), the contracting officer must add the excepted materials to the list in the contract clause.

25.205 Postaward determinations.

(a) If a contractor requests a determination regarding the inapplicability of the Buy American Act after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American Act made after contract award on information required by paragraphs (c) and (d) of the applicable clause at 52.225-9 or 52.225-11 and/or other readily available information.

(c) If a determination, under 25.202(a), is made after contract award that an exception to the Buy American Act applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in 25.202(a) or in accordance with agency procedures.

25.206 Noncompliance.

The contracting officer must—

- (a) Review allegations of Buy American Act violations;
- (b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and
- (c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:
 - (1) Process a determination concerning the inapplicability of the Buy American Act in accordance with 25.205.
 - (2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American Act applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American Act, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with Subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.

SUBPART 25.3—[RESERVED]

I Subpart 25.3—[Reserved]

SUBPART 25.4—[RESERVED]

Subpart 25.4—[Reserved]

Subpart 25.5—Evaluating Foreign Offers— Supply Contracts

25.501 General.

The contracting officer—

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

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

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

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

25.502 Application.

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

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

(2) Rank the remaining offers by price.

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

(b) For acquisitions subject to the Buy American Act, the following applies:

(1) If the low offer is a domestic offer, award on that offer.

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

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

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

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

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

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

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

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

25.503 Group offers.

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

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

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

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

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

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

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

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

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

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

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

25.504 Evaluation examples.

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

25.504-1 Buy American Act.

(a)(1) *Example 1.*

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

(2) *Analysis:* This acquisition is for end products for use in the United States. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic end product (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see 25.105(b)(2)). The resulting evaluated price of \$11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.105(c)). Award on Offer C at \$10,000 (see 25.502(c)(4)(i)).

(b)(1) *Example 2.*

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

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

25.504-2 [Reserved]

25.504-3 [Reserved]

25.504-4 Group award basis.

Key:

DO = Domestic end product
 EL = Eligible product
 NEL = Noneligible product

(a) *Example 1.*

OFFERS			
ITEM	A	B	C
1	DO = \$55,000	EL = \$56,000	NEL = \$50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = <u>18,000</u>	NEL = <u>10,000</u>	DO = <u>14,000</u>
	\$121,500	\$116,000	\$109,000

Problem: Offeror C specifies all-or-none award. Assume all offerors are large businesses. The Trade Agreements Act does not apply.

Analysis: (see 25.503)

STEP 1: Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

Item 1: Low offer A is domestic; select A.

Item 2: Low offer B is eligible; do not apply factor; select B.

Item 3: Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

Item 4: Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

Item 5: Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

STEP 2: Evaluate Offer C against the tentative award pattern for Offers A and B:

OFFERS			
ITEM	LOW OFFER	TENTATIVE AWARD PATTERN FROM A AND B	C
1	A	DO = \$ 55,000	NEL = \$53,000*
2	B	EL = 10,000	EL = 13,000
3	B	DO = 12,000	DO = 10,000
4	A	NEL = 24,000	EL = 22,000
5	B	NEL = <u>10,600*</u>	DO = <u>14,000</u>
		\$111,600	\$112,000

*Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not subject to the Trade Agreements Act. The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600 (\$10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

STEP 3: The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) Example 2.

OFFERS			
ITEM	A	B	C
1	DO = \$50,000	EL = \$50,500	NEL = \$50,000
2	NEL = 10,300	NEL = 10,000	EL = 10,200
3	EL = 20,400	EL = 21,000	NEL = 20,200
4	DO = <u>10,500</u>	DO = <u>10,300</u>	DO = <u>10,400</u>
	\$91,200	\$91,800	\$90,800

Problem: The solicitation specifies award on a group basis. Assume the Buy American Act applies. All offerors are large businesses.

Analysis: (see 25.503(c))

STEP 1: Determine which of the offers are domestic (see 25.503(c)(1)):

	DOMESTIC%	DETERMINATION
A	60,500/91,200 = 66.3%	Domestic
B	10,300/91,800 = 11.2%	Foreign
C	10,400/90,800 = 11.5%	Foreign

STEP 2: Determine whether foreign offers are eligible or noneligible offers (see 25.503(c)(2)):

	DOMESTIC + ELIGIBLE%	DETERMINATION
A	N/A	Domestic
B	81,800/91,800 = 89.1%	Eligible
C	20,600/90,800 = 22.7%	Noneligible

STEP 3: Determine whether to apply an evaluation factor (see 25.503(c)(3)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business) to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent).

FAC 2001-07 MAY 15, 2002

25.504-4

MATERIALS MANAGEMENT ACQUISITION REGULATION

Award on Offer A (see 25.502(c)(4)(ii)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see 25.502(c)(3)).

SUBPART 25.6—[RESERVED]

Subpart 25.6—[Reserved]

Subpart 25.7—Prohibited Sources

25.701 Restrictions.

(a)(1) The Government generally does not acquire supplies or services that cannot be imported lawfully into the United States. Therefore, except as provided in paragraph (a)(2) of this section, even for overseas use, agencies and their contractors and subcontractors must not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

- (i) Cuba (31 CFR part 515);
- (ii) Iran (31 CFR part 560);
- (iii) Iraq (31 CFR part 575);
- (iv) Libya (31 CFR part 550);
- (v) North Korea (31 CFR part 500);
- (vi) Sudan (31 CFR part 538);
- (vii) (Territory of Afghanistan controlled by the Taliban (Executive Order 13129 of July 4, 1999, Blocking Property and Prohibiting Transactions With the Taliban); or
- (viii) Serbia, excluding the territory of Kosovo (Executive Order 13121 of April 30, 1999, Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions

Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo).

(2)(i) Unless agency procedures require a higher level of approval, the contracting officer may, in unusual circumstances, acquire for use outside the United States supplies and services restricted in paragraph (a)(1) of this section. Examples of unusual circumstances are an emergency or when the supplies or services are not otherwise available and a substitute is not acceptable.

(ii) The contracting officer must provide documentation in the contract file whenever this exception is used.

(b) Agencies and their contractors and subcontractors must not acquire any supplies or services from entities controlled by the Government of Iraq or other specially designated nationals (31 CFR Chapter V, Appendix A).

25.702 Source of further information.

Refer questions concerning the restrictions in 25.701 to the—

Department of the Treasury
Office of Foreign Assets Control
Washington, DC 20220
(Telephone (202) 622-2520).

Subpart 25.8—Other International Agreements and Coordination**25.801 General.**

Treaties and agreements between the United States and foreign governments affect the evaluation of offers from foreign entities and the performance of contracts in foreign countries.

25.802 Procedures.

(a) When placing contracts with contractors located outside the United States, for performance outside the United States, contracting officers must—

(1) Determine the existence and applicability of any international agreements and ensure compliance with these agreements; and

(2) Conduct the necessary advance acquisition planning and coordination between the appropriate U.S. executive agencies and foreign interests as required by these agreements.

(b) The Department of State publishes many international agreements in the “United States Treaties and Other International Agreements” series. Copies of this publication normally are available in overseas legal offices and U.S. diplomatic missions.

(c) Contracting officers must award all contracts with Taiwanese firms or organizations through the American Institute of Taiwan (AIT). AIT is under contract to the Department of State.

Subpart 25.9—Customs and Duties

25.900 Scope of subpart.

This subpart provides policies and procedures for exempting from import duties certain supplies purchased under Government contracts.

25.901 Policy.

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. Agencies must use these exemptions when the anticipated savings to appropriated funds will outweigh the administrative costs associated with processing required documentation.

25.902 Procedures.

For regulations governing importations and duties, see the Customs Regulations issued by the U.S. Customs Service, Department of the Treasury (19 CFR Chapter 1). Except as provided elsewhere in the Customs Regulations (see 19 CFR 10.100), all shipments of imported supplies purchased under Government contracts are subject to the usual Customs entry

and examination requirements. Unless the agency obtains an exemption (see 25.903), those shipments are also subject to duty.

25.903 Exempted supplies.

(a) Subchapters VIII and X of Chapter 98 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) list supplies for which exemptions from duty may be obtained when imported into the customs territory of the United States under a Government contract. For certain of these supplies, the contracting agency must certify to the Commissioner of Customs that they are for the purpose stated in the Harmonized Tariff Schedule (see 19 CFR 10.102-104, 10.114, and 10.121 and 15 CFR part 301 for requirements and formats).

(b) Supplies (excluding equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, free of duty and internal revenue tax as provided in 19 U.S.C. 1309 and 1317. The contracting activity must cite this authority on the appropriate customs form when making purchases (see 19 CFR 10.59 - 10.65).

Subpart 25.10—Additional Foreign Acquisition Regulations

25.1001 Waiver of right to examination of records.

(a) *Policy.* The clause at 52.215-2, Audit and Records—Negotiation, prescribed at 15.209(b), and paragraph (d) of the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, prescribed at 12.301(b)(4), implement 10 U.S.C. 2313 and 41 U.S.C. 254d. The basic clauses authorize examination of records by the Comptroller General.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with foreign contractors.

(2) The contracting officer may use 52.215-2 with its Alternate III or 52.212-5 with its Alternate I after—

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as alternate sources of supply, additional cost, and time of delivery; and

(iii) The head of the agency has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings.* The determination and findings must—

(1) Identify the contract and its purpose, and identify if the contract is with a foreign contractor or with a foreign government or an agency of a foreign government;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the supplies or services from the United States and other sources; and

(5) Determine that it will best serve the interest of the United States to use the appropriate alternate clause in paragraph (a)(2) of this section.

25.1002 Use of foreign currency.

(a) Unless an international agreement or the Trade Agreements Act (see 25.408(a)(3)) requires a specific currency, contracting officers must determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers in U.S. currency or a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations generally should require all offers to be priced in the same currency. However, if the solicitation permits submission of offers in other than a specified currency, the contracting officer must convert the offered prices to U.S. currency for evaluation purposes. The contracting officer must use the current market exchange rate from a commonly used source in effect as follows:

(1) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(2) For acquisitions conducted using negotiation procedures—

(i) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency must ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act (31 U.S.C. 1341, 1342, 1511-1519).

Subpart 25.11—Solicitation Provisions and Contract Clauses

25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a) Insert the clause at 52.225-1, Buy American Act—Supplies, in solicitations and contracts with a value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)) but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

- (i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;
- (ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (e.g., nonavailability or public interest); or
- (iii) The acquisition is for supplies for use outside the United States.

(a) Insert the clause at 52.225-8, Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with 25.903(a), if the value of the acquisition—

- (1) Exceeds \$100,000; or
- (2) Is \$100,000 or less, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions valued at \$100,000 or less, the contracting officer may modify paragraphs (b)(1) and (i)(2) of the clause to reduce the dollar figure.

25.1102 Acquisition of construction.

(a) Insert the clause at 52.225-9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$6,481,000.

- (1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American Act.
- (2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b) Insert the provision at 52.225-10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225-9.

25.1103 Other provisions and clauses.

(a) *Restrictions on certain foreign purchases.* Insert the clause at 52.225-13, Restrictions on Certain Foreign Purchases, in solicitations and contracts with a value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)), unless an exception applies (see 25.701(a)(2)).

(b) *Translations.* Insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Sanctions.* (1) Except as provided in paragraph (c)(2) of this section, insert the clause at—

- (i) 52.225-15, Sanctioned European Union Country End Products, in solicitations and contracts for supplies valued at less than \$169,000; or
- (ii) 52.225-16, Sanctioned European Union Country Services, in solicitations and contracts for services—
 - (A) Listed in 25.601(a)(3)(i); or
 - (B) Valued at less than \$169,000.

(2) Do not insert the clauses in paragraph (c)(1) of this section in—

- (i) Solicitations issued and contracts awarded by—
 - (A) A contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States; or
 - (B) The Department of Defense;
- (ii) Purchases at or below the simplified acquisition threshold awarded using simplified acquisition procedures;
- (iii) Total small business set-asides;
- (iv) Contracts in support of U.S. national security interests;
- (v) Contracts for essential spare, repair, or replacement parts available only from sanctioned EU member states; or
- (vi) Contracts for which the head of the agency has made a determination in accordance with 25.602(b).

(d) *Foreign currency offers.* Insert the provision at 52.225-17, Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

* * * * *

FAC 2001–04 FEBRUARY 20, 2002

PART 26—OTHER SOCIOECONOMIC PROGRAMS

Sec.

Subpart 26.1—Indian Incentive Program		Subpart 26.2—Disaster or Emergency Assistance Activities		
26.100	Scope of subpart.	26.200	Scope of subpart.	
26.101	Definitions.	26.201	Policy.	
26.102	Policy.			
26.103	Procedures.			
26.104	Contract clause.			
			Subpart 26.3—[Reserved]	

This page intentionally left blank.

Subpart 26.1—Indian Incentive Program

26.100 Scope of subpart.

This subpart implements 25 U.S.C. 1544, which provides an incentive to prime contractors that use Indian organizations and Indian-owned economic enterprises as subcontractors.

26.101 Definitions.

As used in this subpart—

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

26.102 Policy.

Indian organizations and Indian-owned economic enterprises shall have the maximum practicable opportunity to participate in performing contracts awarded by Federal agencies. In fulfilling this requirement, the Indian Incentive Program allows an incentive payment equal to 5 percent of the amount paid to a subcontractor in performing the contract, if the contract so authorizes and the subcontractor is an Indian organization or Indian-owned economic enterprise.

26.103 Procedures.

(a) Contracting officers and prime contractors, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the

contracting officer has independent reason to question that status.

(b) In the event of a challenge to the representation of a subcontractor, the contracting officer shall refer the matter to the—

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and Grants
Administration
1849 C Street, NW
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the contracting officer.

(c) The BIA will acknowledge receipt of the request from the contracting officer within 5 working days. Within 45 additional working days, BIA will advise the contracting officer, in writing, of its determination.

(d) The contracting officer will notify the prime contractor upon receipt of a challenge.

(1) To be considered timely, a challenge shall—

- (i) Be in writing;
- (ii) Identify the basis for the challenge;
- (iii) Provide detailed evidence supporting the claim;

and

(iv) Be filed with and received by the contracting officer prior to award of the subcontract in question.

(2) If the notification of a challenge is received by the prime contractor prior to award, it shall withhold award of the subcontract pending the determination by BIA, unless the prime contractor determines, and the contracting officer agrees, that award must be made in order to permit timely performance of the prime contract.

(3) Challenges received after award of the subcontract shall be referred to BIA, but the BIA determination shall have prospective application only.

(e) If the BIA determination is not received within the prescribed time period, the contracting officer and the prime contractor may rely on the representation of the subcontractor.

(f) Subject to the terms and conditions of the contract and the availability of funds, contracting officers shall authorize an incentive payment of 5 percent of the amount paid to the subcontractor. Contracting officers shall seek funding in accordance with agency procedures.

26.104 Contract clause.

Contracting officers may insert the clause at 52.226-1, Utilization of Indian Organizations and Indian-Owned Economic Enterprises, in solicitations and contracts if—

(a) In the opinion of the contracting officer, subcontracting possibilities exist for Indian organizations or Indian-owned economic enterprises; and

(b) Funds are available for any increased costs as described in paragraph (b)(2) of the clause at 52.226-1.

Subpart 26.2—Disaster or Emergency Assistance Activities

26.200 Scope of subpart.

This subpart implements 42 U.S.C. 5150, which provides a preference for local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities (see 6.302-5).

26.201 Policy.

(a) When contracting under this subpart for major disaster or emergency assistance activities, such as debris clearance,

distribution of supplies, or reconstruction, preference shall be given, to the extent feasible and practicable, to those organizations, firms, or individuals residing or doing business primarily in the area affected by such major disaster or emergency.

(b) The authority to provide preference under this subpart applies only to those acquisitions, including those which do not exceed the simplified acquisition threshold, conducted during the term of a major disaster or emergency declaration made by the President of the United States under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, *et seq.*).

Subpart 26.3—[Reserved]

* * * * *

PART 27—PATENTS, DATA, AND COPYRIGHTS

Sec.

27.000	Scope of part.	Subpart 27.3—Patent Rights under Government Contracts	
	Subpart 27.1—General		
27.101	[Reserved]	27.300	Scope of subpart.
27.102	[Reserved]	27.301	Definitions.
27.103	Policy.	27.302	Policy.
27.104	General guidance.	27.303	Contract clauses.
	Subpart 27.2—Patents	27.304	Procedures.
27.200	Scope of subpart.	27.304-1	General.
27.201	Authorization and consent.	27.304-2	Contracts placed by or for other Government agencies.
27.201-1	General.	27.304-3	Contracts for construction work or architect-engineer services.
27.201-2	Clauses on authorization and consent.	27.304-4	Subcontracts.
27.202	Notice and assistance.	27.304-5	Appeals.
27.202-1	General.	27.305	Administration of patent rights clauses.
27.202-2	Clause on notice and assistance.	27.305-1	Patent rights follow-up.
27.203	Patent indemnification of Government by contractor.	27.305-2	Follow-up by contractor.
27.203-1	General.	27.305-3	Follow-up by Government.
27.203-2	Clauses for sealed bid contracts (excluding construction).	27.305-4	Conveyance of invention rights acquired by the Government.
27.203-3	Negotiated contracts (excluding construction).	27.305-5	Publication or release of invention disclosures.
27.203-4	Clauses for negotiated contracts (excluding construction).	27.306	Licensing background patent rights to third parties.
27.203-5	Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.	Subpart 27.4—Rights in Data and Copyrights	
27.203-6	Clause for Government waiver of indemnity.	27.400	[Reserved]
27.204	Reporting of royalties—anticipated or paid.	27.401	Definitions.
27.204-1	General.	27.402	Policy.
27.204-2	Solicitation provision for royalty information.	27.403	Data Rights—General.
27.204-3	Patents—notice of Government as a licensee.	27.404	Basic Rights in Data Clause.
27.205	Adjustment of royalties.	27.405	Other data rights provisions.
27.206	Refund of royalties.	27.406	Acquisition of data.
27.206-1	General.	27.407	Rights to technical data in successful proposals.
27.206-2	Clause for refund of royalties.	27.408	Cosponsored research and development activities.
27.207	Classified contracts.	27.409	Solicitation provisions and contract clauses.
27.207-1	General.		
27.207-2	Clause for classified contracts.	Subpart 27.5—[Reserved]	
27.208	Use of patented technology under the North American Free Trade Agreement.	Subpart 27.6—Foreign License and Technical Assistance Agreements	
27.209	Use of patented technology under the General Agreement on Tariffs and Trade (GATT).	27.601	General.

This page intentionally left blank.

27.000 Scope of part.

This part prescribes policies, procedures, and contract clauses pertaining to patents and directs agencies to develop coverage for Rights in Data and Copyrights.

Subpart 27.1—General**27.101 [Reserved]****27.102 [Reserved]****27.103 Policy.**

The policies pertaining to patents, data, and copyrights are set forth in this Part 27 and the related clauses in Part 52.

27.104 General guidance.

(a) The Government encourages the maximum practical commercial use of inventions made while performing Government contracts.

(b) Generally, the Government will not refuse to award a contract on the grounds that the prospective contractor may infringe a patent.

(c) Generally, the Government encourages the use of inventions in performing contracts and, by appropriate contract clauses, authorizes and consents to such use, even

though the inventions may be covered by U.S. patents and indemnification against infringement may be appropriate.

(d) Generally, the Government should be indemnified against infringement of U.S. patents resulting from performing contracts when the supplies or services acquired under the contracts normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or are the same as such supplies or services with relatively minor modifications.

(e) The Government acquires supplies or services on a competitive basis in accordance with Part 6, but it is important that the efforts directed toward full and open competition not improperly demand or use data relating to private developments.

(f) The Government honors the rights in data resulting from private developments and limits its demands for such rights to those essential for Government purposes.

(g) The Government honors rights in patents, data, and copyrights, and complies with the stipulations of law in using or acquiring such rights.

(h) Generally, the Government requires that contractors obtain permission from copyright owners before including privately-owned copyrighted works in data required to be delivered under Government contracts.

Subpart 27.2—Patents

27.200 Scope of subpart.

This subpart prescribes policy with respect to—

- (a) Patent infringement liability resulting from work performed by or for the Government;
- (b) Royalties payable in connection with performing Government contracts; and
- (c) Security requirements covering patent applications containing classified subject matter filed by contractors.

27.201 Authorization and consent.

27.201-1 General.

(a) In those cases where the Government has authorized or consented to the manufacture or use of an invention described in and covered by a patent of the United States, any suit for infringement of the patent based on the manufacture or use of the invention by or for the United States by a contractor (including a subcontractor at any tier) can be maintained only against the Government in the U.S. Claims Court and not against the contractor or subcontractor (28 U.S.C. 1498). To ensure that work by a contractor or subcontractor under a Government contract may not be enjoined by reason of patent infringement, the Government shall give authorization and consent in accordance with this regulation. The liability of the Government for damages in any such suit against it may, however, ultimately be borne by the contractor or subcontractor in accordance with the terms of any patent indemnity clause also included in the contract, and an authorization and consent clause does not detract from any patent indemnification commitment by the contractor or subcontractor. Therefore, both a patent indemnity clause and an authorization and consent clause may be included in the same contract.

(b) The contracting officer shall not include in any solicitation or contract—

- (1) Any clause whereby the Government expressly agrees to indemnify the contractor against liability for patent infringement; or
- (2) Any authorization and consent clause when both complete performance and delivery are outside the United States, its possessions, and Puerto Rico.

27.201-2 Clauses on authorization and consent.

(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition

procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.

(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.

(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.

27.202 Notice and assistance.

27.202-1 General.

The contractor is required to notify the contracting officer of all claims of infringement that come to the contractor's attention in connection with performing a Government contract. The contractor is also required, when requested, to assist the Government with any evidence and information in its possession in connection with any suit against the Government, or any claims against the Government made before suit has been instituted, on account of any alleged patent or copyright infringement arising out of or resulting from the contract performance.

27.202-2 Clause on notice and assistance.

The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.

27.203 Patent indemnification of Government by contractor.

27.203-1 General.

(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.

(b) A patent indemnity clause shall not be used in the following situations:

(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) of this subsection, a patent indemnity clause may be used solely with respect to such supplies.

(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) sealed bid contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b)), and (ii) contracts to be awarded (either by sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either—

(A) Without increase in price on the basis that the patent is invalid or not infringed, or

(B) For other good reasons.

(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.

(4) When the contract is awarded using simplified acquisition procedures.

(5) When the contract is solely for architect-engineer work (see Part 36).

27.203-2 Clauses for sealed bid contracts (excluding construction).

(a) Except when prohibited by 27.203-1(b), the contracting officer shall insert the clause at 52.227-3, Patent Indemnity, in sealed bid contracts for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with rela-

tively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Also, the clause may be included as authorized in 27.203-1(b)(2)(i).

(b) In solicitations and contracts (excluding those for construction) that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience and ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, use the basic clause with its Alternate III.

27.203-3 Negotiated contracts (excluding construction).

A patent indemnity clause is not required in negotiated contracts, (except construction contracts covered at 27.203-5), but may be used as discussed in 27.203-4. A decision to omit a patent indemnity clause in a negotiated fixed-price contract described in this subsection should be based on a price consideration to the Government for forgoing the indemnification rights normally received by commercial purchasers of the same supplies or services.

27.203-4 Clauses for negotiated contracts (excluding construction).

(a) The contracting officer may insert the clause at 52.227-3, Patent Indemnity—

(1) As authorized in 27.203-1(b)(2)(ii); and

(2) Except as prohibited by 27.203-1(b), in solicitations anticipating negotiated contracts (and such contracts) for supplies or services (excluding construction and dismantling, demolition, and removal of improvements), if the contracting officer determines that the supplies or services (or such items with relatively minor modifications) normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. Ordinarily, the contracting officer, in consultation with the prospective contractor, should be able to determine whether the supplies or services being purchased normally are or have been sold or offered for sale by any supplier to the public in the commercial open market. (For negotiated construction contracts, see 27.203-5.)

(b) In solicitations and contracts that call in part for specific components, spare parts, or services (or such items with relatively minor modifications) that normally are or have

been sold or offered for sale by any supplier to the public in the commercial open market, the contracting officer may use the clause with its Alternate I or II, as appropriate. The choice between Alternate I (identification of excluded items) and Alternate II (identification of included items) should be based upon simplicity, Government administrative convenience, and the ease of identification of the items.

(c) In solicitations and contracts for communication services and facilities where performance is by a common carrier, and the services are unregulated and are not priced by a tariff schedule set by a regulatory body, the clause shall be used with its Alternate III.

27.203-5 Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.

Except as prohibited by 27.203-1(b), the contracting officer shall insert the clause at 52.227-4, Patent Indemnity—Construction Contracts, in solicitations and contracts for construction or that are fixed-price for dismantling, demolition, or removal of improvements. If it is determined that the construction will necessarily involve the use of structures, products, materials, equipment, processes, or methods that are nonstandard, noncommercial, or special, the contracting officer may expressly exclude them from the patent indemnification by using the basic clause with its Alternate I.

27.203-6 Clause for Government waiver of indemnity.

If, in the Government's interest, it is appropriate to exempt one or more specific United States patents from the patent indemnity clause, the contracting officer shall obtain written approval from the agency head or designee and shall insert the clause at 52.227-5, Waiver of Indemnity, in solicitations and contracts in addition to the appropriate patent indemnity clause. The contracting officer shall document the contract file with a copy of the written approval.

27.204 Reporting of royalties—anticipated or paid.

27.204-1 General.

(a)(1) To determine whether royalties anticipated or actually paid under Government contracts are excessive, improper, or inconsistent with any Government rights in particular inventions, patents, or patent applications, contracting officers shall require prospective contractors to furnish certain royalty information and shall require contractors to furnish certain royalty reports. Contracting officers shall take appropriate action to reduce or eliminate excessive or improper royalties.

(2) Royalty information shall not be required (except for information under 27.204-3) in sealed bid contracts unless the need for such information is approved at a level above that of the contracting officer as being necessary for proper protection of the Government's interests.

(b) Any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained (see 15.403) should contain a provision requesting information relating to any proposed charge for royalties. If the response to a solicitation includes a charge for royalties, the contracting officer shall, before award of the contract, forward the information relating to the proposed payments of royalties to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall promptly advise the contracting officer of appropriate action. Before award, the contracting officer shall take action to protect the Government's interest with respect to such royalties, giving due regard to all pertinent factors relating to the proposed contract and the advice of the cognizant office.

(c) The contracting officer, when considering the approval of a subcontract, shall require and obtain the same royalty information and take the same action with respect to such subcontracts in relation to royalties as required for prime contracts under paragraph (b) of this subsection. However, consent need not be withheld pending receipt of advice in regard to such royalties from the office having cognizance of patent matters.

(d) The contracting officer shall forward the royalty information and/or royalty reports received to the office having cognizance of patent matters for the contracting activity concerned for advice as to appropriate action.

27.204-2 Solicitation provision for royalty information.

The contracting officer shall insert a solicitation provision substantially as shown in 52.227-6, Royalty Information, in any solicitation that may result in a negotiated contract for which royalty information is desired or for which cost or pricing data is obtained under 15.403. If the solicitation is for communication services and facilities by a common carrier, use the provision with its Alternate I.

27.204-3 Patents—notice of Government as a licensee.

(a) When the Government is obligated to pay a royalty on a patent because of a license agreement between the Government and a patent owner and the contracting officer knows (or has reason to believe) that the licensed patent will be applicable to a prospective contract, the Government should furnish information relating to the royalty to prospective offerors since it serves the interest of both the Government and the offerors. In such situations, the contracting officer should include in the solicitation a notice of the license, the number of the patent, and the royalty rate recited in the license.

(b) When the Government is obligated to pay such a royalty, the solicitation should also require offerors to furnish information indicating whether or not each offeror is a licensee under the patent or the patent owner. This information is necessary so that the Government may either—

(1) Evaluate an offeror's price by adding an amount equal to the royalty; or

(2) Negotiate a price reduction with an offeror-licensee when the offeror is licensed under the same patent at a lower royalty rate.

(c) If the Government is obligated to pay a royalty on a patent involved in the prospective contract, the contracting officer shall insert in the solicitation, substantially as shown, the provision at 52.227-7, Patents—Notice of Government Licensee.

27.205 Adjustment of royalties.

(a) If at any time the contracting officer has reason to believe that any royalties paid, or to be paid, under an existing or prospective contract or subcontract are inconsistent with Government rights, excessive, or otherwise improper, the facts shall be promptly reported to the office having cognizance of patent matters for the contracting activity concerned. The cognizant office shall review the royalties thus reported and such royalties as are reported under 27.204 and 27.206 and, in accordance with agency procedures, shall either recommend appropriate action to the contracting officer or, if authorized, shall take appropriate action.

(b) In coordination with the cognizant office, the contracting officer shall promptly act to protect the Government against payment of royalties on supplies or services—

(1) With respect to which the Government has a royalty-free license;

(2) At a rate in excess of the rate at which the Government is licensed; or

(3) When the royalties in whole or in part otherwise constitute an improper charge.

(c) In appropriate cases, the contracting officer in coordination with the cognizant office shall obtain a refund pursuant to any refund of royalties clause in the contract (see 27.206) or negotiate for a reduction of royalties.

(d) For guidance in evaluating information furnished pursuant to 27.204 and 27.205(a), see 31.205-37 and 31.311-34. See also 31.109 regarding advance understandings on particular cost items, including royalties.

27.206 Refund of royalties.

27.206-1 General.

When a fixed-price contract is negotiated under circumstances that make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor, such royalties may be included in the target

or contract price, provided the contract specifies that the Government will be reimbursed the amount of such royalties if they are not paid. Such circumstances might include, for example, either a pending Government anti-trust action or prospective litigation on the validity of a patent or patents or on the enforceability of an agreement (upon which the contractor or subcontractor bases the asserted obligation) to pay the royalties to be included in the target or contract price.

27.206-2 Clause for refund of royalties.

The contracting officer shall insert the clause at 52.227-9, Refund of Royalties, in negotiated fixed-price contracts and solicitations contemplating such contracts if the contracting officer determines that circumstances make it questionable whether or not substantial amounts of royalties will have to be paid by the contractor or a subcontractor at any tier.

27.207 Classified contracts.

27.207-1 General.

(a) Unauthorized disclosure of classified subject matter, whether in patent applications or resulting from the issuance of a patent, may be a violation of 18 U.S.C. 792, *et seq.* (Espionage and Censorship), and related statutes, and may be contrary to the interests of national security.

(b) Upon receipt from the contractor of a patent application, not yet filed, that has been submitted by the contractor in compliance with paragraph (a) or (b) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, the contracting officer shall ascertain the proper security classification of the patent application. Upon a determination that the application contains classified subject matter, the contracting officer shall inform the contractor of any instructions deemed necessary or advisable relating to transmittal of the application to the United States Patent Office in accordance with procedures in the National Industrial Security Program Operating Manual. If the material is classified "Secret" or higher, the contracting officer shall make every effort to notify the contractor of the determination within 30 days, pursuant to paragraph (a) of the clause.

(c) In the case of all applications filed under the provisions of this section 27.207, the contracting officer, upon receiving the application serial number, the filing date, and the information furnished by the contractor under paragraph (d) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, shall promptly submit that information to personnel having cognizance of patent matters in order that the steps necessary to ensure the security of the application may be taken.

(d) A request for the approval referred to in paragraph (c) of the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, must be considered and acted

upon promptly by the contracting officer to avoid the loss of valuable patent rights of the Government or the contractor.

27.207-2 Clause for classified contracts.

The contracting officer shall insert the clause at 52.227-10, Filing of Patent Applications—Classified Subject Matter, in all classified solicitations and contracts and in all solicitations and contracts where the nature of the work or classified subject matter involved in the work reasonably might be expected to result in a patent application containing classified subject matter.

27.208 Use of patented technology under the North American Free Trade Agreement.

(a) The requirements of this section apply to the use of technology covered by a valid patent when the patent holder is from a country that is a party to the North American Free Trade Agreement (NAFTA).

(b) Article 1709(10) of NAFTA generally requires a user of technology covered by a valid patent to make a reasonable effort to obtain authorization prior to use of the patented technology. However, NAFTA provides that this requirement for authorization may be waived in situations of national emergency or other circumstances of extreme urgency, or public noncommercial use.

(c) Section 6 of Executive Order 12889 of December 27, 1993, waives the requirement to obtain advance authorization for—

(1) An invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid U.S. patent is or will be used or manufactured without a license; and

(2) The existence of a national emergency or other circumstances of extreme urgency, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(d) Section 6(c) of Executive Order 12889 provides that the notice to the patent owner does not constitute an admission of infringement of a valid privately-owned patent.

(e) When addressing issues regarding compensation for the use of patented technology, Government personnel should be advised that NAFTA uses the term “adequate remuneration.” Executive Order 12889 equates “remuneration” to “reasonable and entire compensation” as used in 28 U.S.C. 1498, the statute which gives jurisdiction to the U.S. Court of Federal Claims to hear patent and copyright cases involving infringement by the U.S. Government.

(f) Depending on agency procedures, either the technical/requiring activity or the contracting officer shall ensure compliance with the notice requirements of NAFTA Article 1709(10). A contract award should not be suspended pending notification to the right holder.

(g) When questions arise regarding the notice requirements or other matters relating to this section, the contracting officer should consult with legal counsel.

27.209 Use of patented technology under the General Agreement on Tariffs and Trade (GATT).

(a) Article 31 of Annex 1C, Agreement on Trade-Related Aspects of Intellectual Property Rights, to GATT (Uruguay Round) addresses situations where the law of a member country allows for use of a patent without authorization from the patent holder, including use by the Government.

(b) The contracting officer should consult with legal counsel regarding questions under this section.

Subpart 27.3—Patent Rights under Government Contracts

27.300 Scope of subpart.

This subpart prescribes policies, procedures, and contract clauses with respect to inventions made in the performance of work under a Government contract or subcontract thereunder if a purpose of the contract or subcontract is the conduct of experimental, developmental, or research work, except to the extent statutory requirements necessitate different agency policies, procedures, and clauses as specified in agency supplemental regulations.

27.301 Definitions.

As used in this subpart—

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

“Made” when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

“Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Small business firm” means a small business concern as defined at 15 U.S.C. 632 and implementing regulations of the Administrator of the Small Business Administration. (For the purpose of this definition, the size standard contained in 13 CFR 121.3-8 for small business contractors and in 13 CFR 121.3-12 for small business subcontractors will be used. See MMAR Part 19.)

“Subject invention” means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract; provided, that in the case of a variety of plant, the date of determination defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of contract performance.

27.302 Policy.

(a) *Introduction.* The policy of this section is based on Chapter 18 of title 35, U.S.C. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR part 401), the Presidential Memorandum on Government Patent Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, which provides that, to the extent permitted by law, the head of each agency shall promote the commercialization, in accord with the Presidential Memorandum, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against non-use or unreasonable use of inventions; and, to minimize the costs of administering policies in this area.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) of this section, each contractor may, after disclosure to the Government as required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) of this section, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise—

(1) When the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign-government (see 27.303(c));

(2) In exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of Chapter 18 of title 35, U.S.C. and the Presidential Memorandum;

(3) When it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities; or

(4) When the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to the Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under 35 U.S.C. 202(a)(iv) for agreements with small business firms and nonprofit organizations are limited to inventions occurring under the above two programs.

In the case of small business firms and nonprofit organizations, when an agency justifies and exercises the exception at paragraph (b)(2) of this section on the basis of national security, the contract shall provide the contractor with the right to elect ownership to any invention made under such contract as provided by the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if the invention is not classified by the agency within 6 months of the date it is reported to the agency, or within the same time period the Department of Energy (DOE) does not, as authorized by regulation, law or Executive order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph. When a contract involves a series of separate task orders, an agency may apply the exceptions at paragraph (b)(2) or (3) of this section to individual task orders, and it may structure the contract so that modified patent rights clauses will apply to the task order even though the clause at 52.227-11 is applicable to the remainder of the work. In those instances when the Government has the right to acquire title at the time of contracting, the contractor may, nevertheless, request greater rights to an identified invention (see 27.304-1(a)). The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) of this section.

(c) *Government license.* The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternate I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international organization pursuant to existing treaties or agreements identified in the contract, or to otherwise effectuate such treaties or agreements. In the case of long term contracts, the contract may also provide (see Alternate II) such rights with respect to treaties or agreements to be entered into by the Government after the award of the contract.

(d) *Government right to receive title.* (1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with paragraph (b)(1), (2), (3), or (4) of this section. In addition, to the extent provided in the patent rights clause, the Government has the right to receive title to an invention—

(i) If the contractor has not disclosed the invention within the time specified in the clause;

(ii) In any country where the contractor does not elect to retain rights or fails to elect to retain rights to the invention within the time specified in the clause;

(iii) In any country where the contractor has not filed a patent application within the time specified in the clause;

(iv) In any country where the contractor decides not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on the patent; and/or

(v) In any country where the contractor no longer desires to retain title.

(2) For the purposes of this paragraph, election or filing in a European Patent Office Region or under the Patent Cooperation Treaty constitutes election or filing in any country covered therein to meet the times specified in the clause, provided that the Government has the right to receive title in those countries not subsequently designated by the contractor.

(e) *Utilization reports.* The Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality of utilization reports which are marked with restrictions to the extent permitted by 35 U.S.C. 205 or other applicable laws and 37 CFR part 401. Agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors will continue to provide confidential markings to help prevent inadvertent release outside the agency.

(f) *March-in rights.* (1) With respect to any subject invention in which a contractor has acquired title, contracts provide that the agency shall have the right (unless provided otherwise in accordance with 27.304-1(f)) to require the contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such request, to grant such a license itself, if the agency determines that such action is necessary—

(i) Because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(ii) To alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(iii) To meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(iv) Because the agreement required by paragraph (g) of this section has neither been obtained nor waived, or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of its agreement obtained pursuant to paragraph (g) of this section.

(2) This right of the agency shall be exercised only after the contractor has been provided a reasonable time to present facts and show cause why the proposed agency action should not be taken, and afforded an opportunity to take appropriate action if the contractor wishes to dispute or appeal the proposed action, in accordance with 27.304-1(g).

(g) *Preference for United States industry.* Unless provided otherwise in accordance with 27.304-1(f), contracts provide that no contractor which receives title to any subject invention and no assignee of any such contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the agency upon a showing by the contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(h) *Small business preference.* (1) Nonprofit organization contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market. Paragraph (k)(4) of the clause is not intended, for example, to prevent nonprofit organizations from providing larger firms with a right of first refusal or other options in inventions that relate to research being supported under long-term or other arrangements with larger companies. Under such circumstances, it would not be reasonable to seek and to give a preference to small business licensees.

(i) *Minimum rights to contractor.* (1) When the Government acquires title to a subject invention, the contractor is normally granted a revocable, nonexclusive, royalty-free license to that invention throughout the world. The contractor's license extends to its domestic subsidiaries and affili-

ates, if any, within the corporate structure of which the contractor is a part and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the contracting officer except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with the applicable provisions in the Federal Property Management Regulations and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that country. See the procedures at 27.304-1(e).

(j) *Confidentiality of inventions.* The publication of information disclosing an invention by any party before the filing of a patent application may create a bar to a valid patent. Accordingly, 35 U.S.C. 205 and 37 CFR part 40 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed. Furthermore, Federal agencies shall not be required to release copies of any document which is part of an application for patent filed with the United States Patent and Trademark Office or with any foreign patent office. The Presidential Memorandum on Government Patent Policy specifies that agencies should protect the confidentiality of invention disclosures and patent applications required in performance or in consequence of awards to the extent permitted by 35 U.S.C. 205 or other applicable laws.

27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a)(1) The contracting officer shall insert the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify 52.227-11(f) to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-11, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(4) If the contracting officer includes the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), in a contract with a nonprofit organization for the operation of a Government-owned facility, the contracting officer will include Alternate III in lieu of paragraph (k)(3) of the clause.

(5) If the contract is for the operation of a Government-owned facility, the contracting officer may include Alternate IV with the clause at 52.227-11.

(b)(1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) of this section.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-12, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(c)(1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with paragraphs (c)(2) and (4) or paragraph (d) of this section or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this paragraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(3) Section 401 of title 37 of the Code of Federal Regulations provides that in contracts with small business firms and nonprofit organizations, when an agency exercises the exceptions at 27.302(b)(2) or (3) it shall use the clause at 52.227-11, with such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. The greater rights determinations provision of 52.227-13(b)(2) shall be included in the modified clause.

(d)(1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) of this section as otherwise applicable, agency supplemental regulations may provide another clause and specify its use, or the contracting officer shall insert the clause prescribed in paragraph (c) of this section:

(i) The contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) Before using any of the exceptions under paragraph (d)(1) of this section in a contract with a small business firm or a nonprofit organization and before using the exception of subdivision (d)(1)(ii) of this section for any contractor, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a contract and any subcontracts issued under it, or to any contract to which an exception is applicable. In cases when subdivision (d)(1)(ii) of this section is used, the determination shall also include an analysis justifying the determination. This analysis should address, with specificity, how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. For contracts with small business firms and nonprofit organizations, a copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or offeror along with a notification of its appeal rights under 35 U.S.C. 202(b)(4) in accordance with 27.304-1(a). In the case of small business and nonprofit contractors, except for determination under subdivision (d)(1)(iii) of this section, the agency shall, within 30 days after award of a contract, also provide copies of each determination, statement of fact, and analysis to the Secretary of Commerce. These shall be sent within 30 days after the award of the contract to which they pertain. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) For those agencies excepted under paragraph (a)(1)(i) of this section, only small business firms or non-profit organizations qualify for the clause at 52.227-11. If one of these agencies has reason to question the status of the prospective

contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) Alternates I and II to the clauses at 52.227-11, 52.227-12, and 52.227-13, as applicable, may be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, the Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

27.304 Procedures.

27.304-1 General.

(a) *Contractor appeals of exceptions.* (1) In accordance with 35 U.S.C. 202(b)(4), a small business firm or nonprofit organization contractor has the right to an administrative review of a determination to use one of the exceptions at 27.303(d)(1)(i)-(iv) if the contractor believes that a determination is either (i) contrary to the policies and objectives of this subsection or (ii) constitutes an abuse of discretion by the agency. Paragraphs (a)(2) through (7) of this subsection specify the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a contract or for suspending performance under an award. However, pending final resolution of the claim, the contract may be issued with the patent rights provision proposed by the agency; but should the final decision be in favor of the contractor, the contract will be amended accordingly and the amendment made retroactive to the effective date of the contract.

(2) A contractor may appeal a determination by providing written notice to the agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(3) The appeal shall be decided by the head of the agency or designee who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter for fact-finding.

(4) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit

documentary evidence, present witnesses, and confront such persons as the agency may rely upon. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor by registered or certified mail.

(6) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(7) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials, or any other information in the administrative record. In cases referred for fact-finding, the agency head or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. The agency head or designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make arguments and rebuttal. The decision of the agency head or designee shall be in writing and if it is unfavorable to the contractor, include an explanation of the basis of the decision. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice. In accordance with 35 U.S.C. 203, a small business firm or a nonprofit organization contractor adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand, or modify, as appropriate, the determination of the Federal agency.

(b) *Greater rights determinations.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally-supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except paragraphs (d)(1)), (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause).

(d) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of 35 U.S.C. 202-204.

(e) *Additional requirements.* (1) If it is desired to have the right to require any of the following, when using the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number, and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), and 52.227-13, Patent Rights—Acquisition by the Government, the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(f) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the contractor's license in accordance with 27.302(i)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding in accordance with the procedures of paragraph (g)(2) of this section, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable and if known to the agency, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in, in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in this section and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the head of the agency or designee.

(3) Within 30 days after the receipt of the written notice of march-in, the contractor, its assignee or exclusive licensee, may submit in person, in writing, or through a representative information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

(4) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as the agency may present. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor, its assignee, or licensee.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor, its assignee, or exclusive licensee by registered or certified mail. The contractor, its assignee or exclusive licensee, and agency representatives will be given

30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor, oral arguments will be held before the agency head or designee that will make the final determination.

(6) In cases in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor, its assignee or exclusive licensee and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of the agency or designee and sent to the contractor, its assignee, or exclusive licensee, by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons upon which the proceeding was initiated may be exercised.

(7) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(8) These procedures shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor," as used herein, shall be deemed to include the inventory and the term "exclusive licensee" shall be deemed to include partially exclusive licensee.

(9) An agency determination unfavorable to the contractor, its assignee, or exclusive licensee shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 203(2).

(h) *Licenses and assignments under contracts with non-profit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval. Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee will be subject to the same provisions as the contractor).

27.304-2 Contracts placed by or for other Government agencies.

The following procedures apply unless agency agreements provide otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify and furnish the patent rights clause to be used. Normally, the clause will be in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (*e.g.*, because of statutory requirements, a deviation, or exceptional circumstances) that clause shall be used rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the agency, then that agency clause and no other patent rights clause shall be included in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable and is only in part for the requesting agency, then the work which is on behalf of the requesting agency shall be identified in the contract, and the agency clause shall be made applicable to that portion. In such situations, the remaining portion of the work (for the agency awarding the contract) shall likewise be identified and the appropriate patent rights clause (if required) shall be made applicable to that remaining portion.

(3) If the request states that an agency clause is not required in any resulting contract, then the appropriate patent rights clause shall be used, if a patent rights clause is required.

(b) Where use of the specified clause, or any modification, waiver, or omission of the Government's rights under any provisions therein, requires a written determination, the reporting of such determination, or a deviation, if any such acts are required in accordance with 27.303(d)(2), it shall be the responsibility of the requesting agency to make such determination, submit the required reports, and obtain such deviations, in consultation with the contracting agency, unless otherwise agreed between the contracting and requesting agencies. However, a deviation to a specified clause of the requesting agency shall not be made without prior approval of that agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any invention disclosures or other reporting requirements of the specified clauses. Normally the requesting agency shall be responsible for the handling of any disclosed inventions, including the filing of patent applications where the Government receives title, and the custody, control, and licensing

thereof, unless provided otherwise in the instructions or other agreements with the contracting agency.

27.304-3 Contracts for construction work or architect-engineer services.

(a) If a solicitation or contract for construction work or architect-engineer services has as a purpose the performance of experimental, developmental, or research work or test and evaluation studies involving such work and calls for, or can be expected to involve, the design of a Government facility or of novel structures, machines, products, materials, processes, or equipment (including construction equipment), it shall include a patent rights clause selected in accordance with the policies and procedures of this Subpart 27.3.

(b) A solicitation or contract for construction work or architect-engineer services that calls for or can be expected to involve only “standard types of construction” to be built by previously developed equipment, methods, and processes shall not include a patent rights clause. The term “standard types of construction” means construction in which the distinctive features, if any, in all likelihood will amount to no more than—

(1) Variations in size, shape, or capacity of otherwise structurally orthodox and conventionally acting structures or structural groupings; or

(2) Purely artistic or esthetic (as distinguished from functionally significant) architectural configurations and designs of both structural and nonstructural members or groupings, which may or may not be sufficiently novel or meritorious to qualify for design protection under the design patent or copyright laws.

27.304-4 Subcontracts.

(a) The policies and procedures covered by this subpart apply to all contracts at any tier. Hence, a contractor awarding a subcontract and a subcontractor awarding a lower-tier subcontract that has as a purpose the conduct of experimental, developmental, or research work is required to determine the appropriate patent rights clause to be included that is consistent with these policies and procedures. Generally, the clause at either 52.227-11, 52.227-12, or 52.227-13 is to be used and will be so specified in the patent rights clause contained in the higher-tier contract, but the contracting officer may direct the use of a particular patent rights clause in any lower-tier contract in accordance with the policies and procedures of this subpart. For instance, when the clause at 52.227-13 is in the prime contract because the work is to be performed overseas, any subcontract with a nonprofit organization would contain the clause at 52.227-11.

(b) Whenever a prime contractor or a subcontractor considers the inclusion of a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the

proffered clause, the matter shall be resolved by the agency contracting officer in consultation with counsel.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

27.304-5 Appeals.

(a) The agency official initially authorized to take any of the following actions shall provide the contractor with a written statement of the basis for the action at the time the action is taken, including any relevant facts that were relied upon in taking the action:

(1) A refusal to grant an extension to the invention disclosure period under paragraph (c)(4) of the clauses at 52.227-11 and 52.227-12.

(2) A request for a conveyance of title to the Government under 27.302(d)(1)(i) through (v).

(3) A refusal to grant a waiver under 27.302(g), Preference for U.S. Industry.

(4) A refusal to approve an assignment under 27.304-1(h)(1).

(5) A refusal to approve an extension of the exclusive license period under 27.304-1(h)(2).

(b) Each agency shall establish and publish procedures under which any of the agency actions listed in paragraph (a) of this subsection may be appealed to the head of the agency or designee. Review at this level shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of 35 U.S.C. 200-206 and this subpart.

(c) Appeals procedures established under paragraph (b) of this subsection shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in 37 CFR part 401.6(e)–(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1)(i) through (v) including any dispute as to whether or not an invention is a subject invention.

(d) To the extent that any of the actions described in paragraph (a) of this subsection are subject to appeal under the Contract Disputes Act, the procedures under that Act will satisfy the requirements of paragraphs (b) and (c) of this subsection.

27.305 Administration of patent rights clauses.

27.305-1 Patent rights follow-up.

(a) It is important that the Government and the contractor know and exercise their rights in inventions conceived or first actually reduced to practice in the course of or under Government contracts in order to ensure their expeditious availability to the public and to enable the Government, the contractor, and the public to avoid unnecessary payment of

royalties and to defend themselves against claims and suits for patent infringement. To attain these ends, contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in such inventions are established;

(3) Where patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of such inventions is achieved.

(b) If a subject invention is made under funding agreements of more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

27.305-2 Follow-up by contractor.

(a) *Contractor procedures.* If required by the applicable clause, the contractor shall establish and maintain effective procedures to ensure its patent rights obligations are met and that subject inventions are timely identified and disclosed, and when appropriate, patent applications are filed.

(b) *Contractor reports.* Contractors shall submit all reports required by the patent rights clause to the contracting officer or other representative designated for such purpose in the contract. Agencies may, in their implementing instructions, provide specific forms for use on an optional basis for such reporting.

27.305-3 Follow-up by Government.

(a) Agencies shall maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in 27.304-2 shall be coordinated with the appropriate agency.

(b) The contracting officer administering the contract (or other representative specifically designated in the contract for such purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause. If the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information and, if the failure persists, shall

take appropriate action to secure compliance. Invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses shall be promptly furnished by the contracting officer administering the contract (or other designee) to the procuring agency or contracting activity for which the procurement was made for appropriate action.

(c) Contracting activities shall establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Ordinarily a contractor should have written instructions for its employees covering compliance with these contract obligations. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily towards contracts that, because of the nature of the research, development, or experimental work or the large dollar amount spent on such work, are more likely to result in subject inventions significant in number or quality, and towards contracts when there is reason to believe the contractors may not be complying with their contractual obligations. Other contracts may be reviewed using a spot-check method, as feasible. Appropriate follow-up procedures and activities may include the investigation or review of selected contracts or contractors by those qualified in patent and technical matters to detect failures to comply with contract obligations.

(d) Follow-up activities should include, where appropriate, use of Government patent personnel—

(1) To interview agency technical personnel to identify novel developments made in contracts;

(2) To review technical reports submitted by contractors with cognizant agency technical personnel;

(3) To check the Official Gazette of the United States Patent and Trademark Office and other sources for patents issued to the contractor in fields related to its Government contracts; and

(4) If additional information is required, to have cognizant Government personnel interview contractor personnel regarding work under the contract involved, observe the work on site, and inspect laboratory notebooks and other records of the contractor related to work under the contract.

(e) If it is determined that a contractor or subcontractor does not have a clear understanding of the rights and obligations of the parties under a patent rights clause, or that its procedures for complying with the clause are deficient, a post-award orientation conference or letter should ordinarily be used to explain these rights and obligations (see Subpart 42.5). When a contractor fails to establish, maintain, or follow effective procedures for identifying, disclosing, and, when appropriate, filing patent applications on inventions (if such procedures are required by the patent rights clause), or after appropriate notice fails to correct any deficiency, the

contracting officer may require the contractor to make available for examination books, records, and documents relating to the contractor's inventions in the same field of technology as the contract effort to enable a determination of whether there are such inventions and may invoke the withholding of payments provision (if any) of the clause. The withholding of payments provision (if any) of the patent rights clause or of any other contract clause may also be invoked if the contractor fails to disclose a subject invention. Significant or repeated failures by a contractor to comply with the patent rights obligation in its contracts shall be documented and made a part of the general file (see 4.801(c)(3)).

27.305-4 Conveyance of invention rights acquired by the Government.

(a) Agencies are responsible for those procedures necessary to protect the Government's interest in subject inventions. When the Government acquires the entire right, title, and interest in an invention by contract, this is normally accomplished by an assignment either from each inventor to the contractor and from the contractor to the Government, or from the inventor to the Government with the consent of the contractor, so that the chain of title from the inventor to the Government is clearly established. When the Government's rights are limited to a license, there should be a confirmatory instrument to that effect.

(b) The form of conveyance of title from the inventor to the contractor must be legally sufficient to convey the rights the contractor is required to convey to the Government. Agencies may, by supplemental instructions, develop suitable assignments, licenses, and other papers evidencing any rights of the Government in patents or patents applications, including such instruments as may be required to be recorded in the Statutory Register or documented in the Government Register maintained by the U.S. Patent and Trademark Office pursuant to Executive Order 9424, February 18, 1944.

27.305-5 Publication or release of invention disclosures.

(a) In accordance with the policy at 27.302(i), to protect their mutual interests, contractors and the Government should cooperate in deferring the publication or release of invention disclosures until the filing of the first patent application, and use their best efforts to achieve prompt filing when publication or release may be imminent. The Government will, on its part and to the extent authorized by 35 U.S.C. 205, withhold from disclosure to the public any invention disclosures reported under the patent rights clauses of 52.227-11, 52.227-12, or 52.227-13 for a reasonable time in order for patent applications to be filed. The policy in 27.302(i) regarding protection of confidentiality shall be followed.

(b) The Government will also use reasonable efforts to withhold from disclosure to the public for a reasonable time other information disclosing a reported invention included in any data delivered pursuant to contract requirements; provided, that the contractor notifies the agency as to the identity of the data and the invention to which it relates at the time of delivery of the data. Such notification must be to both the contracting officer and any patent representative to which the invention is reported, if other than the contracting officer.

(c) As an additional protection for small business firms and nonprofit organizations 37 CFR part 401 prescribes that agencies shall not disclose or release, in accordance with 35 U.S.C. 205, for a period of 18 months from the filing date of the application to third parties pursuant to request under the Freedom of Information Act or otherwise copies of any document which the agency obtained under contract which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other Government agencies or contractors of Government agencies under an obligation to maintain such information in confidence.

27.306 Licensing background patent rights to third parties.

(a) A contract with a small business firm or nonprofit organization will not contain a provision allowing the Government to require the licensing to third parties of inventions owned by the contractor that are not subject inventions unless such provision has been approved by the agency head and written justification has been signed by the agency head. Any such provision will clearly state whether the licensing may be required in connection with the practice of a subject invention, a specifically identified work object, or both. The agency head may not delegate the authority to approve such provisions or to sign justifications required for such provisions.

(b) The Government will not require the licensing of third parties under any such provision unless the agency head determines that the use of the invention by others is necessary for the practice of a subject invention or for the use of a work object of the contract and that such action is necessary to achieve the practical application of the subject invention or work object. Any such determination will be on the record after an opportunity for a hearing, and the contractor shall be given notification of the determination by certified or registered mail. The notification shall include a statement that any action commenced for judicial review of such determination must be brought by the contractor within 60 days after the notification.

Subpart 27.4—Rights in Data and Copyrights

27.400 [Reserved]

27.401 Definitions.

As used in this subpart—

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

“Form, fit, and function data” means data relating to items, components, processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements, but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data, as set forth in a Limited Rights Notice if included in a data rights clause of the contract.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof. (Agencies may, however, adopt the following alternate definition:

“Limited rights data” means data developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged (see 27.404(c)).

“Restricted computer software” means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

“Restricted rights” means the rights of the Government in restricted computer software as set forth in a Restricted Rights Notice, if included in a data rights clause of the contract, or as otherwise may be included or incorporated in the contract.

“Technical data” means data other than computer software, which are of a scientific or technical nature.

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

27.402 Policy.

(a) It is necessary for the Government, in order to carry out its missions and programs, to acquire or obtain access to many kinds of data produced during or used in the performance of their contracts. Agencies require such data to: obtain competition among suppliers; fulfill certain responsibilities for disseminating and publishing the results of their activities; ensure appropriate utilization of the results of research, development, and demonstration activities including the dissemination of technical information to foster subsequent technological developments; and meet other programmatic and statutory requirements. Further, for defense purposes, such data are also required by agencies to meet specialized acquisition needs and ensure logistics support.

(b) At the same time, the Government recognizes that its contractors may have a legitimate proprietary interest (*e.g.*, a property right or other valid economic interest) in data resulting from private investment. Protection of such data from unauthorized use and disclosure is necessary in order to prevent the compromise of such property right or economic interest, avoid jeopardizing the contractor’s commercial position, and preclude impairment of the Government’s ability to obtain access to or use of such data. The protection of such data by the Government is also necessary to encourage qualified contractors to participate in Government programs and apply innovative concepts to such programs. In light of the above considerations, in applying these policies, agencies shall strike a balance between the Government’s need and the contractor’s legitimate proprietary interest.

27.403 Data Rights—General.

All contracts that require data to be produced, furnished, acquired or specifically used in meeting contract performance requirements, must contain terms that delineate the respective rights and obligations of the Government and the contractor regarding the use, duplication, and disclosure of such data, except certain contracts resulting from sealed bidding or similar situations which require only existing data (other than limited rights data and restricted computer software) to be delivered and reproduction rights are not needed for such data. As a general rule the data rights clause at 52.227-14, Rights in Data—General, including Alternates I, II, III, IV, and V, where determined to be appropriate as discussed in 27.404, is to be used for that purpose. However, in certain contracts either the particular subject matter of the contract or the intended use of the data may require the use of other prescribed clauses, or may not require the use of any prescribed clause, as discussed in 27.405 and 27.408. Also, in selecting a data rights clause, it is important to note that any such clause does not specify the data (in terms of type, quantity or quality) that is to be delivered, but only the respective rights of the Government and the contractor to

use, disclose, or reproduce such data. Accordingly, the contract should also include appropriate terms to specify the data to be delivered.

27.404 Basic Rights in Data Clause.

(a) *Unlimited Rights Data.* Under the clause at 52.227-14, Rights in Data—General, the Government acquires unlimited rights in the following data (except as provided in paragraph (f) of this section for copyrighted data): (1) data first produced in the performance of a contract (except to the extent such data constitute minor modifications to data that are limited rights data or restricted computer software); (2) form, fit, and function data delivered under contract; (3) data (except as may be included with restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under a contract; and (4) all other data delivered under the contract other than limited rights data or restricted computer software (see paragraph (b) of this section). If any of the foregoing data are published copyrighted data with the notice of 17 U.S.C. 401 or 402, the Government acquires them under a copyright license, as set forth in paragraph (f) of this section, rather than with unlimited rights.

(b) *Limited Rights Data and Restricted Computer Software.* The clause at 52.227-14, Rights in Data—General, enables the contractor to protect qualifying limited rights data and restricted computer software by withholding such data from delivery to the Government and delivering form, fit, and function data in lieu thereof. However, when an agency has a need to obtain delivery of limited rights data or restricted computer software, the clause may be used with its Alternates II or III, as set forth in paragraphs (d) and (e) of this section. These alternatives enable a contracting officer to selectively request the delivery of such data with limited rights or restricted rights, either by specifying such delivery in the contract or by specific request.

(c) *Alternate Definition of Limited Rights Data.* In the clause at 52.227-14, Rights in Data—General, in order for data to qualify as limited rights data, in addition to being data that either embody a trade secret or are data that are commercial or financial and confidential or privileged, such data must also pertain to items, components, or processes developed at private expense, including minor modifications thereof. However, for contracts that do not require the development, use or delivery of items, components or processes that are intended to be acquired by or for the Government, an agency may adopt for general use or for use in specific circumstances the alternate definition of limited rights data set forth in Alternate I. The alternate definition does not require that such data pertain to items, components, or processes developed at private expense; but rather that such data were

developed at private expense and embody a trade secret or are commercial or financial and confidential or privileged.

(d) *Protection of Limited Rights Data Specified for Delivery.* (1) Contracting officers are authorized to modify the clause at 52.227-14, Rights in Data—General, by use of Alternate II, which Alternate adds paragraph (g)(2) to the clause to enable the Government to require delivery of limited rights data rather than allowing the contractor to withhold such data. To obtain such delivery, the contract may identify and specify data to be delivered, or the contracting officer may require, by written request during contract performance, the delivery of data that has been withheld or identified as withholdable under paragraph (g)(1) of the clause at 52.227-14, Rights in Data—General. In addition, if agreed to during negotiations, the contract may specifically identify data that are not to be delivered under Alternate II or which, if delivered, will be delivered with limited rights. The limited rights obtained by the Government are set forth in the Limited Rights Notice contained in paragraph (g)(2) (Alternate II). Such limited rights data will not, without permission of the contractor, be used by the Government for purposes of manufacture, and will not be disclosed outside the Government except for certain specific purposes as may be set forth in the Notice, and then only if the Government makes the disclosure subject to prohibition against further use and disclosure by the recipient. The following are examples of specific purposes which may be adopted by an agency in its supplement and added to the Limited Rights Notice of paragraph (g)(2) of the clause (Alternate II):

(i) Use (except for manufacture) by support service contractors.

(ii) Evaluation by nongovernment evaluators.

(iii) Use (except for manufacture) by other contractors participating in the Government's program of which the specific contract is a part, for information and use in connection with the work performed under each contract.

(iv) Emergency repair or overhaul work.

(v) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government.

(2) As an aid in determining whether the clause at 52.227-14 should be used with its Alternate II, the provision at 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227-14, Rights in Data—General. This provision requests that an offeror state in response to a solicitation, to the extent feasible, whether limited rights data are likely to be used in meeting the data delivery requirements set forth in the solicitation. In addition, the need for Alternate II should be considered during negotiations or discussion with an offeror, particularly where negotiations are based on an unsolicited proposal. However,

use of the clause at 52.227-14, Rights in Data—General, without Alternate II does not preclude this Alternate from being used subsequently by modification during contract performance, should the need arise for delivery of limited rights data that have been withheld or identified as withholdable.

(3) Whenever data that would qualify as limited rights data, if it were to be delivered in human readable form, is formatted as a computer data base for the purpose of delivery under a contract containing the clause at 52.227-14, Rights in Data—General, such data is to be treated as limited rights data, rather than restricted computer software, for the purposes of paragraph (g) of that clause.

(e) *Protection of Restricted Computer Software Specified for Delivery.* (1) Contracting officers are authorized to modify the clause at 52.227-14, Rights in Data—General, by use of Alternate III, which Alternate adds paragraph (g)(3) to the clause to enable the Government to require delivery of restricted computer software rather than allowing the contractor to withhold such restricted computer software. To obtain such delivery, the contract may identify and specify the computer software to be delivered, or the contracting officer may require by written request during contract performance, the delivery of computer software that has been withheld or identified as withholdable under paragraph (g)(1) of the clause. In addition, if agreed to during negotiations, the contract may specifically identify computer software that are not to be delivered under Alternate III or which, if delivered, will be with restricted rights. In considering whether to use the clause at 52.227-14 with its Alternate III, it should be particularly noted that unlike other data, computer software is also an end item in itself, such that if withheld and form, fit, and function data provided in lieu thereof, an operational program will not be acquired. Thus, if delivery of restricted computer software is anticipated to be needed to meet contract performance requirements, the contracting officer should assure that the clause is used with its Alternate III. Unless otherwise agreed to (see paragraph (e)(2) of this section) the restricted rights obtained by the Government are set forth in the Restricted Rights Notice contained in paragraph (g)(3) (Alternate III). Such restricted computer software will not be used or reproduced by the Government, or disclosed outside the Government, except that the computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with a backup computer if any computer for which it was acquired becomes inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of any derivative software incorporating restricted computer software are made subject to the same restricted rights;

(v) Disclosed to and reproduced for use by support service contractors, subject to the same restriction under which the Government acquired the software;

(vi) Used or copied for use in or transferred to a replacement computer; and

(vii) Used in accordance with subdivisions (e)(1)(i) through (v) of this section, without disclosure prohibitions, if the computer software is published copyrighted computer software.

(2) The restricted rights set forth in paragraph (e)(1) of this section are the minimum rights the Government normally obtains with restricted computer software and will automatically apply when such software is acquired under the Restricted Rights Notice of paragraph (g)(3) (Alternate III) of the clause. However, either greater or lesser rights, consistent with the purposes and needs for which the software is to be acquired, may be specified by the contracting officer in a particular contract or prescribed in agency regulations. For example, consideration should be given to any networking needs or any requirements for use of the computer software from remote terminals. Also, in addressing such needs, the scope of the restricted rights may be different for the documentation accompanying the computer software than for the programs and data bases. Any additions to, or limitations on, the restricted rights set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause are to be expressly stated in the contract or in a collateral agreement incorporated in and made part of the contract, and the notice modified accordingly.

(3) As an aid in determining whether the clause should be used with its Alternate III, the provision at 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, may be included in any solicitation containing the clause at 52.227-14, Rights in Data—General. This provision requests that an offeror state, in response to a solicitation, to the extent feasible, whether restricted computer software is likely to be used in meeting the data delivery requirements set forth in the solicitation. In addition, the need for Alternate III should be considered during negotiations or discussions with an offeror, particularly where negotiations are based on an unsolicited proposal. However, use of the clause at 52.227-14, Rights in Data—General, without Alternate III does not preclude this Alternate from being used subsequently by modification during contract performance, should the need arise for the delivery of restricted computer software that has been withheld or identified as withholdable.

(f) *Copyrighted Data*—(1) *Data First Produced in the Performance of a Contract*. (i) In order to enhance the transfer or dissemination of information produced at Government expense, contractors are normally authorized, without prior approval of the contracting officer, to establish claim to copyright subsisting in technical or scientific articles based on or containing data first produced in the performance of work under a contract containing the clause at 52.227-14, Rights in Data—General and published in academic, technical or professional journals, symposia proceedings and similar works. Otherwise, the permission of the contracting officer is required in accordance with subdivision (f)(1)(ii) of this section or any applicable agency regulations, to establish claim to copyright subsisting in data first produced in the performance of a contract unless the clause is used with its Alternate IV in accordance with subdivision (f)(1)(iii) of this section. Agencies may, however, restrict copyright under certain circumstances in accordance with paragraph (g)(3) of this section.

(ii) Usually, permission for a contractor to establish claim to copyright subsisting in data first produced under the contract will be granted when copyright protection will enhance the appropriate transfer or dissemination of such data and the commercialization of products or processes to which it pertains. The request for permission must be made in writing, and may be made either prior to contract award or subsequently during contract performance. It should identify the data involved or furnish copies of the data for which permission is requested, as well as a statement as to the intended publication or dissemination media or other purpose for which copyright is desired. The request normally will be granted unless—

(A) The data consist of a report that represents the official views of the agency or that the agency is required by statute to prepare;

(B) The data are intended primarily for internal use by the Government;

(C) The data are of the type that the agency itself distributes to the public under an agency program;

(D) The Government determines that limitation on distribution of the data is in the national interest; or

(E) The Government determines that the data should be disseminated without restriction.

(iii) An Alternate IV is provided for use with the clause at 52.227-14, Rights in Data—General, which Alternate provides a substitute paragraph (c)(1) in the clause granting blanket permission for contractors to establish claim to copyright subsisting in all data first produced in the performance of the contract without further request being made by the contractor. Alternate IV shall be used in all contracts for basic or applied research (other than those for management or operation of Government facilities and in contracts and subcontracts in support of programs being con-

ducted at such facilities or where international agreements require otherwise) to be performed solely by colleges and universities. Alternate IV will not be used in contracts with colleges and universities if a purpose of the contract is for development of computer software for distribution to the public (including use in solicitations) by or on behalf of the Government. In addition, Alternate IV may be used in other contracts if an agency determines to grant blanket permission for contractors to establish claim to copyright subsisting in all data first produced in the performance of contract without further request being made by the contractor. In any contract where Alternate IV is used, the contract may exclude any data, items or categories of data from the blanket permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(3) to the clause, consistent with paragraph (g)(3) of this section.

(iv) Whenever a contractor establishes claim to copyright subsisting in data (other than computer software) first produced in the performance of a contract, the Government is granted a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute to the public, perform publicly and display publicly by or on behalf of the Government, for all such data, as set forth in paragraph (c)(1) of the clause at 52.227-14, Rights in Data—General. For computer software the scope of the Government's license does not include the right to distribute to the public. Agencies may also, either on a case-by-case basis, or on a class basis if provided in implementing regulations, obtain a license of different scope than set forth in paragraph (c)(1) of the clause if the agency determines that such different license will substantially enhance the transfer or dissemination of any data first produced under the contract, and will not interfere with the Government's use of the data as contemplated by the contract or if required for international agreements. If an agency obtains such a different license, the scope of that license shall be clearly stated in a conspicuous place on the medium on which the data is recorded. That is, if a report, the scope of the different license shall be put on the cover, or first page, of the report. If computer software, the scope of the different license shall be placed on the most conspicuous place available.

(v) Whenever a contractor establishes claim to copyright in data first produced in the performance of a contract, irrespective of which Alternate is used with the clause or the scope of the Government's license, the contractor is required to affix the applicable copyright notices of 17 U.S.C. 401 or 402, and acknowledgment of Government sponsorship, (including the contract number) to the data whenever such data are delivered to the Government, published, or deposited for registration as a published work in the U.S. Copyright Office. Failure to do so could result in such data being treated as unlimited rights data (see paragraph (i) of this section).

(2) *Data Not First Produced in the Performance of a Contract.* (i) Contractors are not to incorporate in data delivered under a contract any data that is not first produced under the contract and that is marked with the copyright notice of 17 U.S.C. 401 or 402, without either (A) acquiring for or granting to the Government certain copyright license rights for the data, or (B) obtaining permission from the contracting officer to do otherwise. The copyright license the Government acquires for such data will normally be of the same scope as discussed in subdivision (f)(1)(iv) of this section, and is set forth in paragraph (c)(2) of the clause at 52.227-14, Rights in Data—General. However, agencies may, on a case-by-case basis, or on a class basis if provided in implementing agency regulations, obtain a license of different scope if the agency determines that such different license will not be inconsistent with the purpose of acquiring the data. If a license of a different scope is acquired, it must be so stated in the contract and clearly set forth in a conspicuous place on the data when delivered to the Government. In addition, if computer software not first produced under a contract is delivered with the copyright notice of 17 U.S.C. 401, the Government's license will be as set forth in paragraph (g)(3) (Alternate III) if included in the clause at 52.227-14, Rights in Data—General, or as otherwise may be provided in a collateral agreement incorporated in or made part of the contract.

(ii) Contractors delivering data with both an authorized limited rights or restricted rights notice and the copyright notice of 17 U.S.C. 401 or 402 should modify the copyright notice to include the following (or similar) statement: "Unpublished—all rights reserved under the copyright laws of the United States." If this statement is omitted, the contractor may be afforded an opportunity to correct it in accordance with paragraph (h) of this section. Otherwise, data delivered with a copyright notice of 17 U.S.C. 401 or 402 may be presumed to be published copyrighted data subject to the applicable license rights set forth in subdivision (f)(2)(i) of this section, without disclosure limitations or restrictions.

(iii) If contractor action causes limited rights or restricted rights data to be published with the copyright notice of 17 U.S.C. 401 or 402 after its delivery to the Government, the Government is relieved of disclosure and use limitations and restrictions regarding such data, and the contractor should advise the Government, request that a copyright notice be placed on the copies of the data delivered to the Government and acknowledge that the applicable copyright license set forth in subdivision (f)(2)(i) of this section applies.

(g) *Release, Publication, and Use of Data.* (1) In paragraph (d) of the clause at 52.227-14, Rights in Data—General, paragraph (d)(1) recognizes the fact that normally the contractor has the right to use, release to others, reproduce,

distribute, or publish data first produced in the performance of a contract, except to the extent such data may be subject to Federal export control or to national security laws or regulations. In addition, to the extent the contractor receives or is given access to data that is necessary for the performance of the contract from or by the Government or others acting on behalf of the Government, and the data contains restrictive markings, paragraph (d)(2) provides an agreement with the contractor to treat the data in accordance with the markings, unless otherwise specifically authorized by the contracting officer.

(2) In contracts for basic or applied research with universities or colleges, no restrictions may be placed upon the conduct of or reporting on the results of unclassified basic or applied research, except as provided in applicable U.S. Statutes. For the purposes of this paragraph, agency restrictions on the release or disclosure of computer software that has been, readily can be, or is intended to be, developed to the point of practical application (including for agency distribution under established programs) are not considered restrictions on the reporting of the results of basic or applied research. Agencies may also restrict claim to copyright in any computer software for purposes of established agency distribution programs, or where required to accomplish the purpose for which the software is produced.

(3) Except for the results of basic or applied research under contracts with universities or colleges, agencies may, to the extent provided in their MMAR supplements, place limitations or restrictions on the contractor's right to use, release to others, reproduce, distribute, or publish any data first produced in the performance of the contract, including a requirement to assign copyright to the Government or another party, either by adding a paragraph (d)(3) to the Rights in Data—General clause at 52.227-14, or by express limitations or restrictions in the contract. In the latter case, the limitations or restrictions should be referenced in the Rights in Data—General clause. However, such regulatory restrictions or limitations are not to be imposed unless they are determined by the agency to be necessary in the furtherance of agency mission objectives, needed to support specific agency programs, or necessary to meet statutory requirements. Notwithstanding the provisions of this paragraph, agencies may obtain, if provided in their MMAR supplement, for information purposes only, advance copies of articles intended for publication in academic, scientific or technical journals or symposia proceedings or similar works.

(h) *Unauthorized Marking of Data.* Except for validation of restrictive markings on technical data under contracts for major systems, or for support of major systems, by agencies subject to the provisions of Title III of the Federal Property and Administrative Services Act of 1949, the Government has, in accordance with paragraph (e) of the clause at 52.227-14, Rights in Data—General, the right to either

return to the contractor data containing markings not authorized by that clause, or to cancel or ignore such markings. However, markings will not be canceled or ignored without making written inquiry of the contractor and affording the contractor at least 30 days to provide a written justification to substantiate the propriety of the markings. Failure of the contractor to respond, or failure to provide a written justification to substantiate the propriety of the markings within the time afforded, may result in the Government's action to cancel or ignore the markings. If the contractor provides a written justification to substantiate the propriety of the markings, it will be considered by the contracting officer and the contractor notified of any determination based thereon. If the contracting officer determines that the markings are authorized, the contractor will be so notified in writing. Further, if the contracting officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the contractor will be furnished a written determination which shall become the final agency decision regarding the appropriateness of the markings and the markings will be cancelled or ignored and the data will no longer be made subject to disclosure prohibitions, unless the contractor files suit within 90 days in a court of competent jurisdiction. In any event, the markings will not be cancelled or ignored unless the contractor fails to respond within the period provided, or, if the contractor does respond, until final resolution of the matter, either by the contracting officer's determination becoming the final agency decision or by final disposition of the matter by court decision if suit is filed. In addition, the contractor is not precluded from bringing a claim pursuant to the Disputes clause of this contract if applicable, that may arise as the result of the Government's action to remove or ignore any markings on data, unless such action occurs as the result of a final disposition of the matter by a court of competent jurisdiction.

(i) *Omitted or Incorrect Notices.* (1) Data delivered under a contract containing the clause at 52.227-14, Rights in Data—General, without a limited rights notice or restricted rights notice, and without a copyright notice, will be presumed to have been delivered with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the contractor may within 6 months (or a longer period approved by the contracting officer for good cause shown) request permission of the contracting officer to have omitted limited rights or restricted rights notices, as applicable, placed on qualifying data at the contractor's expense, and the contracting officer may agree to so permit if the contractor—

(i) Identifies the data for which a notice is to be added or corrected;

(ii) Demonstrates that the omission of the proposed notice was inadvertent;

(iii) Establishes that use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to any disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The contracting officer may also—

(i) Permit correction, at the contractor's expense, of incorrect notices if the contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(j) *Inspection of Data at the Contractor's Facility.* Contracting officers may obtain the right to inspect data at the contractor's facility by use of Alternate V, which adds paragraph (j) to provide that right in the clause at 52.227-14, Rights in Data—General. Agencies may also adopt Alternate V for general use. The data subject to inspection may be data withheld or withholdable under paragraph (g)(1) of the clause. Such inspection may be made by the contracting officer or designee (including nongovernmental personnel under the same conditions as the contracting officer) for the purpose of verifying a contractor's assertion regarding the limited rights or restricted rights status of the data, or for evaluating work performance under the contract. This right may be exercised up to 3 years after acceptance of all items to be delivered under the contract. The contract may specify data items that are not subject to inspection under paragraph (j) (Alternate V). If the contractor demonstrates to the contracting officer that there would be a possible conflict of interest if inspection were made by a particular representative, the contracting officer shall designate an alternate representative.

27.405 Other data rights provisions.

(a) *Production of special works.* (1) The clause at 52.227-17, Rights in Data—Special Works, is to be used in contracts (or may be made applicable to portions thereof) that are primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's own use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples are contracts for—

(i) The production of audiovisual works, including motion pictures or television recordings with or without accompanying sound, or for the preparation of motion picture scripts, musical compositions, sound tracks, translation, adaptation, and the like;

(ii) Histories of the respective agencies, departments, services, or units thereof;

(iii) Surveys of Government establishments;

(iv) Works pertaining to the instruction or guidance of Government officers and employees in the discharge of their official duties;

(v) The compilation of reports, books, studies, surveys, or similar documents that do not involve research, development, or experimental work;

(vi) The collection of data containing personally identifiable information such that the disclosure thereof would violate the right of privacy or publicity of the individual to whom the information relates;

(vii) Investigatory reports;

(viii) The development, accumulation, or compilation of data (other than that resulting from research, development, or experimental work performed by the contractor), the early release of which could prejudice follow-on acquisition activities or agency regulatory or enforcement activities; or

(ix) The development of computer software programs, where the program—

(A) May give a commercial advantage; or

(B) Is agency mission sensitive, and release could prejudice agency mission, programs, or follow-on acquisitions.

(2) The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released, or reproduced other than for contract performance. Contracts for the production of audiovisual works, sound recordings, etc., may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the works are acquired.

(3) Subdivision (c)(1)(ii) of the clause at 52.227-17, Rights in Data—Special Works, which enables the Government to obtain assignment of copyright in any data first produced in the performance of the contract, may be deleted if the contracting officer determines that such assignment is not needed to further the objectives of the contract.

(4) Paragraph (e) of the clause, which requires the contractor to indemnify the Government against any liability incurred as the result of any violation of trade secrets, copyrights, right of privacy or publicity, or any libelous or other unlawful matter arising out of or contained in any production or compilation of data that are subject to the clause, may be deleted or limited in scope where the contracting officer determines that, because of the nature of the particular data involved, such liability will not arise.

(5) When the audiovisual or other special works are produced to accomplish a public purpose other than acquisition for the Government's own use (such as for production and distribution to the public of such works by other than a Federal agency) agencies are authorized to modify the

Rights in Data—Special Works clause for use in such contracts, with rights in data provisions which meet agency mission needs yet protect free speech and freedom of expression, as well as the artistic license of the creator of the work.

(b) *Rights relating to existing data other than limited rights data.* (1) Acquisition of existing audiovisual and similar works. The clause at 52.227-18, Rights in Data—Existing Works, is for use in contracts exclusively for the acquisition (without modification) of existing motion pictures, television recordings, and other audiovisual works; sound recordings; musical, dramatic, and literary works; pantomimes and choreographic works; pictorial, graphic, and sculptural works; and works of a similar nature. The contract may set forth limitations consistent with the purposes for which the works covered by the contract are being acquired. Examples of these limitations are (i) means of exhibition or transmission, (ii) time, (iii) type of audience, and (iv) geographical location. If the contract requires that works of the type indicated in paragraph (b)(1) of this section are to be modified through editing, translation, or addition of subject matter, etc. (rather than purchased in existing form) the clause at 52.227-17, Rights in Data—Special Works, is to be used. (See paragraph (a) of this section.)

(2) *Acquisition of existing computer software.*

(i) When contracting other than from GSA's Multiple Award Schedule contracts for the acquisition of existing computer software (*i.e.*, privately developed software normally vended commercially under a license or lease agreement restricting its use, disclosure, or reproduction), no specific contract clause prescribed in this subpart need be used, but the contract (or purchase order) must specifically address the Government's rights to use, disclose and reproduce the software, which rights must be sufficient for the Government to fulfill the need for which the software is being acquired. Such rights may be negotiated and set forth in the contract using the guidance concerning restricted rights as set forth in 27.404(e), or the clause at 52.227-19, Commercial Computer Software—Restricted Rights, may be used. Restricted computer software acquired under GSA Multiple Award Schedule contracts and orders are excluded from this requirement. The guidance concerning rights set forth in 27.404(e), as well as those in the clause at 52.227-19, are the minimum rights the Government usually should accept. Thus if greater rights than these minimum rights are needed, or lesser rights are to be acquired, they must be negotiated and set forth in the contract (or purchase order). This includes any additions to, or limitations on, the rights set forth in paragraph (b) of the clause at 52.227-19 when used. Examples of greater rights may be those necessary for networking purposes or use of the software from remote terminals communicating with a host computer where the software is located. If the computer software is to be acquired with unlimited rights,

the contract must also so state. In addition, the contract must adequately describe the computer programs and/or data bases, the form (tapes, punch cards, disk pack, and the like), and all the necessary documentation pertaining thereto. If the acquisition is by lease or license, the disposition of the computer software (by returning to the vendor or destroying) at the end of the term of the lease or license must be addressed.

(ii) If the contract incorporates, makes reference to, or uses a vendor's standard commercial lease, license, or purchase agreement, such agreement shall be reviewed to assure that it is consistent with subdivision (b)(2)(i) of this section. Caution should be exercised in accepting a vendor's terms and conditions, since they may be directed to commercial sales and may not be appropriate for Government contracts. Any inconsistencies in a vendor's standard commercial agreement shall be addressed in the contract and the contract terms shall take precedence over the vendor's standard commercial agreement. If the clause at 52.227-19, Commercial Computer Software—Restricted Rights, is used, inconsistencies in the vendor's standard commercial agreement regarding the Government's right to use, duplicate or disclose the computer software are reconciled by that clause.

(iii) If a prime contractor under a contract containing the clause at 52.227-14, Rights in Data—General, with paragraph (g)(3) (Alternate III) in the clause, acquires restricted computer software from a subcontractor (at any tier) as a separate acquisition for delivery to or for use on behalf of the Government, the contracting officer may approve any additions to, or limitations on the restricted rights in the Restricted Rights Notice of paragraph (g)(3) in a collateral agreement incorporated in and made part of the contract.

(3) *Other existing data and works.* Except for existing audiovisual and similar works pursuant to paragraph (b)(1) of this section, and existing computer software pursuant to paragraph (b)(2) of this section, no clause contained in this subpart is required to be included in (i) contracts solely for the acquisition of books, periodicals, and other printed items in the exact form in which such items are to be obtained unless reproduction rights are to be acquired; or (ii) other contracts (*e.g.*, contracts resulting from sealed bidding) that require only existing data (other than limited rights data) to be delivered and such data are available without disclosure prohibitions, unless reproduction rights to the data are to be obtained. If the reproduction rights to the data are to be obtained in any contract of the type described in subdivision (b)(3)(i) or (ii) of this section, such rights must be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line data base services in the same form as they are normally available to the general public.

27.406 Acquisition of data.

(a) *General.* (1) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(2) To the extent feasible, all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data, shall be specified in the contract. Further, and to the extent feasible, in major system acquisitions, data requirements shall be set out as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with paragraph (a)(1) of this section, develop their own contract schedule provisions in agency procedures (including data requirements lists) for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(3) Data delivery requirements should normally not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights in lieu of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see 27.404(d) and (e)). If greater rights are needed such need should be clearly set forth in the solicitation and the contractor fairly compensated for such greater rights.

(b) *Additional data requirements.* (1) Recognizing that in some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at the time of contracting, the clause at 52.227-16, Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of such contracts as the actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a

university or college, and the contracting officer believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(2) Data may be ordered under the clause at 52.227-16, Additional Data Requirements, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contractor may be relieved of retention requirements for specified data items by the contracting officer at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the Additional Data Requirements clause if such data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the Additional Data Requirements clause by deleting the term "or specifically used" in paragraph (a) thereof if delivery of such data is not necessary to meet the Government's requirements for data. Any data ordered under this clause will be subject to the Rights in Data—General clause (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract, and data authorized to be withheld under such clause will not be required to be delivered under the Additional Data Requirements clause, except as provided in Alternate II or Alternate III, if included in the clause (see 27.404(d) and (e)).

(3) Agencies not having an established program for dissemination of computer software shall give consideration to not ordering additional computer software under the clause at 52.227-16, Additional Data Requirements, for the sole purpose of disseminating or marketing of the software to the public especially if this will provide the contractor additional incentive to make improvements to the software at its own expense and disseminate or market it. This should not preclude an agency from including a summary description of computer software available from a contractor in any data dissemination programs which it operates, with a statement as to how the potential user can obtain it through the contractor, licensee, or assignee. In cases where the contracting officer orders software for internal purposes, consideration shall be given, consistent with the Government's needs, to not ordering particular source codes, algorithms, processes, formulae or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

(c) *Acceptance of data.* As required by 41 U.S.C. 418a (d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract

clause as required by Subpart 46.3, and the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

(d) *Major System Acquisition.* (1) In order to assure that technical data needed to support a major system acquisition are timely delivered and are complete, accurate, and satisfy the requirements of the contract concerning the data, the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, is to be included in contracts for or in support of a major system (as the term "major system" is defined in Section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98-577), including every detailed design, development, or production contract for a major system acquisition and contracts for any individual part, component, subassembly, assembly, or subsystem integral to the major system, and other property which may be replaced during the service life of the system, and including spare parts and replenishment spare parts.

(2) The clause at 52.227-21, Technical Data, Declaration, Revision, and Withholding of Payment—Major Systems, requires the contractor, upon delivery of any technical data made subject to the clause in the contract, to declare that to the best of its knowledge and belief, such data are complete, accurate, and comply with contract requirements. It also provides for corrections of any deficiencies in the data, as well as for the ability of the contracting officer to request revisions of the data to reflect engineering design changes made during performance of the contract and affecting form, fit, and function of the items the data depict. Further included is the authority for the contracting officer to withhold payment under the contract to assure timely delivery of the technical data and/or assure correction if the technical data are not complete, accurate, and in compliance with contract requirements.

(3) When the clause at 52.227-21, Technical Data, Declaration, Revision and Withholding of Payment—Major Systems, is used, the section of the contract specifying data delivery requirements (see paragraph (a)(2) of this section) shall expressly identify those line items of technical data to which the clause applies. Upon delivery of such technical data, the contracting officer or designee shall review the technical data and the contractor's declaration relating thereto to assure that the data are complete, accurate, and comply with contract requirements. If not, the contractor is to be requested to correct the deficiencies, and payment may be withheld until such is done. Final payment should not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(4) In a contract for or in support of a major system the contracting officer shall include contractual provisions requiring, as an element of performance under the contract, the delivery of any technical data, other than computer software, relating to the major system or supplies for the major system procured or to be procured by the Government, which are to be developed exclusively with Federal funds in the performance of the contract if the delivery of such technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at 52.227-22, Major System—Minimum Rights, is to be included in such contracts in addition to the clause at 52.227-14, Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in technical data developed exclusively with Federal funds. In any contract to which this paragraph (d)(4) applies, technical data, other than computer software, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the United States as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

27.407 Rights to technical data in successful proposals.

(a) Contracting officers may, in consideration of contract award, desire to acquire unlimited rights in technical data (but not commercial or financial information) contained in a successful proposal upon which a contract award is based. However, before such unlimited rights are acquired, the prospective contractor must be afforded the opportunity either—

(1) To advise the contracting officer that the technical data, or portions thereof (to be identified by the prospective contractor), are covered by any restrictive notice regarding the disclosure and use of proposal information authorized by Subpart 15.2 or 15.6 (or any agency supplement thereto), and request that such protection be maintained by excluding the data from the Government's rights; or

(2) To establish to the contracting officer's satisfaction that identified portions of the technical data do not relate directly to or will not be utilized in the work to be performed under the contract, and request that such portions be excluded from the Government's rights.

(b) If unlimited rights to technical data in successful proposals, as set forth in paragraph (a) of this section, are to be acquired, it shall be by use of the clause at 52.227-23, Rights

to Proposal Data (Technical). Any excluded technical data will be identified by inserting appropriate proposal page numbers in the clause, which clause enables the identification of data to be excluded from the Government's rights, as discussed in paragraph (a) of this section. Such exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in Subpart 15.2 or 15.6 (or agency supplements thereto) relating to proposal information (*i.e.*, will be used for evaluation purposes only). If the clause at 52.227-23, Rights to Proposal Data (Technical), is included in a contract, the prospective contractor must be specifically afforded the opportunity to exclude technical data as set forth in paragraph (a) of this section, and the contract file must reflect that fact. If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to their acquisition as limited rights data, if they so qualify, in accordance with 27.404(d).

27.408 Cosponsored research and development activities.

(a) In contracts involving cosponsored research and development wherein the contractor is required to make substantial contributions of funds or resources (*i.e.*, by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of or acquire less than unlimited rights to any data developed and delivered under such contract. Agencies may regulate the use of this authority in their supplements. Basically such rights should, at a minimum, assure use of the data for agreed-to Governmental purposes (including reprocurement rights as appropriate), and will address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to directed licensing provisions if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in 27.402. As a guide, such clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (*i.e.*, Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any

work element to be performed under the contract. Such clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, such clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies which will be available, in any event, to the public for their direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding therefor) and so identified in the contract, any data resulting therefrom may be treated under such clause as limited rights data or restricted computer software in accordance with 27.404(d) or (e), as applicable; or if such treatment is inconsistent with the purpose of the contract, rights to such data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.

27.409 Solicitation provisions and contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.227-14, Rights in Data—General, including its use with Alternate I through Alternate V as may be required or authorized in accordance with paragraphs (b) through (f) of this section, in solicitations and contracts if it is contemplated that data will be produced, furnished, or acquired under the contract, unless the contract is—

(i) For the production of special works of the type set forth in 27.405(a), but the clause at 52.227-14, Rights in Data—General, shall be included in the contract and made applicable to data other than special works, as appropriate;

(ii) For the acquisition of existing data works, as described in 27.405(b);

(iii) To be performed outside the United States, its possessions, and Puerto Rico, in which case agencies may prescribe different clauses (see paragraph (n) of this section);

(iv) For architect-engineer services or construction work, in which case agencies may utilize the clause at 52.227-17, Rights in Data—Special Works, or may prescribe different clauses;

(v) For the management, operation, design, or construction of a Government-owned facility to perform research, development, or production work, in which case agencies may prescribe different clauses (see paragraph (p) of this section); or

(vi) A contract involving cosponsored research and development in which a clause providing for less than unlimited right has been authorized. (See 27.408.)

(2) Paragraph (e)(3) of the clause at 52.227-14, Rights in Data—General, may be deleted or reserved by an agency not subject to Title III of the Federal Property and Administrative Services Act.

(b) If an agency determines, in accordance with 27.404(c), to adopt the alternate definition of "Limited Rights Data" in paragraph (a) of the clause, the clause shall be used with its Alternate I.

(c) In accordance with 27.404(d), if a contracting officer determines it is necessary to obtain the delivery of limited rights data, the clause shall be used with its Alternate II. The contracting officer shall, when Alternate II is used, assure that the purposes, if any, for which limited rights data are to be disclosed outside the Government are included in the "Limited Rights Notice" of paragraph (g)(2) of the clause.

(d) In accordance with 27.404(e), if a contracting officer determines it is necessary to obtain the delivery of restricted computer software, the clause shall be used with its Alternate III. Any greater or lesser rights regarding the use, duplication, or disclosure of restricted computer software than those set forth in the Restricted Rights Notice of paragraph (g)(3) of the clause must be specified in the contract and the notice modified accordingly.

(e) The clause shall be used with its Alternate IV in contracts for basic or applied research (other than those for the management or operation of Government facilities or where international agreements require otherwise), to be performed solely by universities and colleges. The clause may be used with its Alternate IV in other contracts if in accordance with 27.404(f)(1) an agency determines to grant blanket permission for the contractor to establish claim to copyright subsisting in all data first produced without further request being made by the contractor. When Alternate IV is used, the contract may exclude items or categories of data from the blanket permission granted, either by express provisions in the contract or by the addition of a paragraph (d)(3) to the clause (see 27.404(g)(1)).

(f) In accordance with 27.404(i), if a contracting officer needs to have the right to inspect certain data at a contractor's facility or if by an agency, generally the clause shall be used with its Alternate V.

(g) In accordance with 27.404(d)(2), if the contracting officer desires to have an offeror state in response to a solicitation, to the extent feasible, whether limited rights data or restricted computer software are likely to be used in meeting the data delivery requirements set forth in the solicitation, the contracting officer shall insert the provision at 52.227-15, Representation of Limited Rights Data and Restricted Computer Software, in any solicitation containing the clause at 52.227-14, Rights in Data—General. The contractor's response will provide an aid in determining whether the clause should be used with Alternate II and/or Alternate III.

(h) The contracting officer shall normally insert the clause at 52.227-16, Additional Data Requirements, in solicitations and contracts involving experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. (See 27.406(b).) This clause may also be used in other contracts when considered appropriate.

(i) In accordance with 27.405(a), the contracting officer shall insert the clause at 52.227-17, Rights in Data—Special Works, in solicitations and contracts primarily for the production or compilation of data (other than limited rights data or restricted computer software) for the Government's internal use, or when there is a specific need to limit distribution and use of the data and/or to obtain indemnity for liabilities that may arise out of the content, performance, or disclosure of the data. Examples of such contracts are set forth in 27.405(a). The contract may specify the purposes and conditions (including time limitations) under which the data may be used, released or reproduced by the contractor for other than contract performance. Contracts for the production of audiovisual works, sound recordings, etc. may include limitations in connection with talent releases, music licenses, and the like that are consistent with the purposes for which the data is acquired.

(j) The contracting officer shall insert the clause at 52.227-18, Rights in Data—Existing Works, in solicitations and contracts exclusively for the acquisition, without modification, of existing audiovisual and similar works of the type set forth in 27.405(b)(1). The contract may set forth limitations consistent with the purposes for which the work is being acquired. The clause at 52.227-17, Rights in Data—Special Works, shall be used if existing works are to be modified, as by editing, translation, addition of subject matter, etc.

(k) In accordance with 27.405(b)(2), when contracting (other than from GSA's Multiple Award Schedule contracts) for the acquisition of existing computer software, the clause at 52.227-19, Commercial Computer Software-Restricted Rights, may be used in the solicitation and contract. In any event, the contracting officer shall assure that the contract contains terms to obtain sufficient rights for the Government to fulfill the need for which the software is being acquired and is otherwise consistent with 27.405(b)(2).

(l) While no specific clause of this subpart is required to be included in contracts solely for the acquisition, without disclosure prohibitions, of books, publications and similar items in the exact form in which such items exist prior to the request for purchase (*i.e.*, the off-the-shelf purchase of such items), or in other contracts (*e.g.*, contracts resulting from sealed bidding) where only existing data available without disclosure prohibitions is to be furnished, if reproduction rights are to be acquired the contract shall include terms addressing such rights. (See 27.405(b)(3).)

(m) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts to be performed outside the United States, its possessions, and Puerto Rico.

(n) Agencies may prescribe in their procedures the clause at 52.227-17, Rights in Data—Special Works, or prescribe, as appropriate, clauses consistent with the policy in 27.402 in contracts for architect-engineer services and construction work.

(o) Agencies may prescribe in their procedures, as appropriate, a clause consistent with the policy of 27.402 in contracts for management, operation, design, or construction of Government-owned research, development, or production facilities, and in contracts and subcontracts in support of programs being conducted at such facilities.

(p) In accordance with 27.406(d), the contracting officer shall insert the clause at 52.227-21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, in contracts for major systems acquisitions or for support of major systems acquisitions. When used, this clause requires that the technical data to which it applies be specified in the contract. (See 27.406(d).)

(q) The contracting officer shall insert the clause at 52.227-22, Major System—Minimum Rights, in contracts for major systems or contracts in support of major systems.

(r) In accordance with 27.407, if a contracting officer desires to acquire unlimited rights in technical data contained in a successful proposal upon which a contract award is based, the contracting officer shall insert the clause at 52.227-23, Rights to Proposed Data (Technical). Rights to technical data in a proposal are not acquired by mere incorporation by reference of the proposal in the contract, and if a proposal is incorporated by reference, Section 27.404 must be followed to assure that such rights are appropriately addressed.

Subpart 27.5—[Reserved]

Subpart 27.6—Foreign License and Technical Assistance Agreements

27.601 General.

MMS shall provide all necessary rules and regulations as are required for the proper application of the laws and policies of the U.S. Government regarding—

(a) Elimination in agreements between domestic concerns and foreign governments or foreign concerns of charges for the use of patents in which the U.S. Government has a royalty-free license or of charges in agreements for the use of data that the U.S. Government has a right to use and disclose to others, that is in the public domain, or that was acquired

by the U.S. Government with the unrestricted right to use, duplicate, or disclose and to have or permit others to do so;

(b) Foreign license and technical assistance agreements between the U.S. Government and United States domestic concerns;

(c) Guidance on negotiating contract prices and terms concerning patents and data, including royalties, in contracts between the U.S. Government and a foreign government or foreign concern; and

(d) Regulations and guidance on controls on the exportation of data relating to certain designated items, such as arms or munitions of war, and guidance on reviews of agreements involving such data (see 22 CFR 124).

* * * * *

**MATERIALS MANAGEMENT ACQUISITION
REGULATION**

**SUBCHAPTER E—GENERAL CONTRACTING
REQUIREMENTS**

PART 28—BONDS AND INSURANCE

Sec.

- 28.000 Scope of part.
- 28.001 Definitions.

Subpart 28.1—Bonds and Other Financial Protections

- 28.100 Scope of subpart.
- 28.101 Bid guarantees.
- 28.101-1 Policy on use.
- 28.101-2 Solicitation provision or contract clause.
- 28.101-3 [Reserved]
- 28.101-4 Noncompliance with bid guarantee requirements.
- 28.102 Performance and payment bonds and alternative payment protections for construction contracts.
- 28.102-1 General.
- 28.102-2 Amount required.
- 28.102-3 Contract clauses.
- 28.103 Performance and payment bonds for other than construction contracts.
- 28.103-1 General.
- 28.103-2 Performance bonds.
- 28.103-3 Payment bonds.
- 28.103-4 Contract clause.
- 28.104 Annual performance bonds.
- 28.105 Other types of bonds.
- 28.105-1 Advance payment bonds.
- 28.105-2 Patent infringement bonds.
- 28.106 Administration.
- 28.106-1 Bonds and bond-related forms.
- 28.106-2 Substitution of surety bonds.
- 28.106-3 Additional bond and security.
- 28.106-4 Contract clause.
- 28.106-5 Consent of surety.
- 28.106-6 Furnishing information.
- 28.106-7 Withholding contract payments.
- 28.106-8 Payment to subcontractors or suppliers.

Subpart 28.2—Sureties and Other Security for Bonds

- 28.200 Scope of subpart.
- 28.201 Requirements for security.
- 28.202 Acceptability of corporate sureties.
- 28.203 Acceptability of individual sureties.

- 28.203-1 Security interests by an individual surety.
- 28.203-2 Acceptability of assets.
- 28.203-3 Acceptance of real property.
- 28.203-4 Substitution of assets.
- 28.203-5 Release of lien.
- 28.203-6 Contract clause.
- 28.203-7 Exclusion of individual sureties.
- 28.204 Alternatives in lieu of corporate or individual sureties.
- 28.204-1 United States bonds or notes.
- 28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.
- 28.204-3 Irrevocable letter of credit (ILC).
- 28.204-4 Contract clause.

Subpart 28.3—Insurance

- 28.301 Policy.
- 28.302 Notice of cancellation or change.
- 28.303 Insurance against loss of or damage to Government property.
- 28.304 Risk-pooling arrangements.
- 28.305 [Reserved]
- 28.306 Insurance under fixed-price contracts.
- 28.307 Insurance under cost-reimbursement contracts.
- 28.307-1 Group insurance plans.
- 28.307-2 Liability.
- 28.308 Self-insurance.
- 28.309 Contract clauses for workers' compensation insurance.
- 28.310 Contract clause for work on a Government installation.
- 28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
- 28.311-1 Contract clause.
- 28.311-2 Agency solicitation provisions and contract clauses.
- 28.312 Contract clause for insurance of leased motor vehicles.
- 28.313 Contract clauses for insurance of transportation or transportation-related services.

This page intentionally left blank.

28.000 Scope of part.

This part prescribes requirements for obtaining financial protection against losses under contracts that result from the use of the sealed bid or negotiated methods. It covers bid guarantees, bonds, alternative payment protections, security for bonds, and insurance.

28.001 Definitions.

As used in this part—

“Attorney-in-fact” means an agent, independent agent, underwriter, or any other company or individual holding a power of attorney granted by a surety (see also “power of attorney” at 2.101).

“Bid” means any response to a solicitation, including a proposal under a negotiated acquisition. See the definition of “offer” at 2.101.

“Bid guarantee” means a form of security assuring that the bidder—

(1) Will not withdraw a bid within the period specified for acceptance; and

(2) Will execute a written contract and furnish required bonds, including any necessary coinsurance or reinsurance agreements, within the time specified in the bid, unless a longer time allowed, after receipt of the specified forms.

“Bidder” means any entity that is responding or has responded to a solicitation, including an offeror under a negotiated acquisition.

“Bond” means a written instrument executed by a bidder or contractor (the “principal”), and a second party (the “surety” or “sureties”) (except as provided in 28.204), to assure fulfillment of the principal’s obligations to a third party (the “obligee” or “Government”), identified in the bond. If the principal’s obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee. The types of bonds and related documents are as follows:

(1) An advance payment bond secures fulfillment of the contractor’s obligations under an advance payment provision.

(2) An annual bid bond is a single bond furnished by a bidder, in lieu of separate bonds, which secure all bids (on other than construction contracts) requiring bonds submitted during a specific Government fiscal year.

(3) An annual performance bond is a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of the contractor’s obligations under contracts (other than construction contracts) requiring bonds entered into during a specific Government fiscal year.

(4) A patent infringement bond secures fulfillment of the contractor’s obligations under a patent provision.

(5) A payment bond assures payments as required by law to all persons supplying labor or material in the prosecution of the work provided for in the contract.

(6) A performance bond secures performance and fulfillment of the contractor’s obligations under the contract.

“Consent of surety” means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

“Penal sum” or “penal amount” means the amount of money specified in a bond (or a percentage of the bid price in a bid bond) as the maximum payment for which the surety is obligated or the amount of security required to be pledged to the Government in lieu of a corporate or individual surety for the bond.

“Reinsurance” means a transaction which provides that a surety, for a consideration, agrees to indemnify another surety against loss which the latter may sustain under a bond which it has issued.

Subpart 28.1—Bonds and Other Financial Protections

28.100 Scope of subpart.

This subpart prescribes requirements and procedures for the use of bonds, alternative payment protections, and all types of bid guarantees.

28.101 Bid guarantees.

28.101-1 Policy on use.

(a) A contracting officer shall not require a bid guarantee unless a performance bond or a performance and payment bond is also required (see 28.102 and 28.103). Except as provided in paragraph (c) of this subsection, bid guarantees shall be required whenever a performance bond or a performance and payment bond is required.

(b) All types of bid guarantees are acceptable for supply or service contracts (see annual bid bonds and annual performance bonds coverage in 28.001). Only separate bid guarantees are acceptable in connection with construction contracts. Agencies may specify that only separate bid bonds are acceptable in connection with construction contracts.

(c) The chief of the contracting office may waive the requirement to obtain a bid guarantee when a performance bond or a performance and payment bond is required if it is determined that a bid guarantee is not in the best interest of the Government for a specific acquisition (*e.g.*, overseas construction, emergency acquisitions, sole-source contracts). Class waivers may be authorized by the agency head or designee.

28.101-2 Solicitation provision or contract clause.

(a) The contracting officer shall insert a provision or clause substantially the same as the provision at 52.228-1, Bid Guarantee, in solicitations or contracts that require a bid guarantee or similar guarantee. For example, the contracting officer may modify this provision—

(1) To set a period of time that is other than 10 days for the return of executed bonds;

(2) For use in connection with construction solicitations when the agency has specified that only separate bid bonds are acceptable in accordance with 28.101-1(b);

(3) For use in solicitations for negotiated contracts; or

(4) For use in service contracts containing options for extended performance.

(b) The contracting officer shall determine the amount of the bid guarantee for insertion in the provision at 52.228-1 (see 28.102-2(a)). The amount shall be adequate to protect the Government from loss should the successful bidder fail to execute further contractual documents and bonds as required. The bid guarantee amount shall be at least 20 percent of the bid price but shall not exceed \$3 million. When the penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

28.101-3 [Reserved]

28.101-4 Noncompliance with bid guarantee requirements.

(a) In sealed bidding, noncompliance with a solicitation requirement for a bid guarantee requires rejection of the bid, except in the situations described in paragraph (c) of this subsection when the noncompliance shall be waived.

(b) In negotiation, noncompliance with a solicitation requirement for a bid guarantee requires rejection of an initial proposal as unacceptable, if a determination is made to award the contract based on initial proposals without discussion, except in the situations described in paragraph (c) of this subsection when noncompliance shall be waived. (See 15.306(a)(2) for conditions regarding making awards based on initial proposals.) If the conditions for awarding based on initial proposals are not met, deficiencies in bid guarantees submitted by offerors determined to be in the competitive range shall be addressed during discussions and the offeror shall be given an opportunity to correct the deficiency.

(c) Noncompliance with a solicitation requirement for a bid guarantee shall be waived in the following circumstances unless the contracting officer determines in writing that acceptance of the bid would be detrimental to the Government's interest when—

(1) Only one offer is received. In this case, the contracting officer may require the furnishing of the bid guarantee before award;

(2) The amount of the bid guarantee submitted is less than required, but is equal to or greater than the difference between the offer price and the next higher acceptable offer;

(3) The amount of the bid guarantee submitted, although less than that required by the solicitation for the maximum quantity offered, is sufficient for a quantity for which the offeror is otherwise eligible for award. Any award to the offeror shall not exceed the quantity covered by the bid guarantee;

(4) The bid guarantee is received late, and late receipt is waived under 14.304;

(5) A bid guarantee becomes inadequate as a result of the correction of a mistake under 14.407 (but only if the bidder will increase the bid guarantee to the level required for the corrected bid);

(6) A telegraphic offer modification is received without corresponding modification of the bid guarantee, if the modification expressly refers to the previous offer and the offeror corrects any deficiency in bid guarantee;

(7) An otherwise acceptable bid bond was submitted with a signed offer, but the bid bond was not signed by the offeror;

(8) An otherwise acceptable bid bond is erroneously dated or bears no date at all; or

(9) A bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

28.102 Performance and payment bonds and alternative payment protections for construction contracts.

28.102-1 General.

(a) The Miller Act (40 U.S.C. 270a-270f) requires performance and payment bonds for any construction contract exceeding \$100,000, except that this requirement may be waived—

(1) By the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond; or

(2) As otherwise authorized by the Miller Act or other law.

(b)(1) Pursuant to Section 4104(b)(2) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355), for construction contracts greater than \$25,000, but not greater than \$100,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

(i) A payment bond.

(ii) An irrevocable letter of credit (ILC).

(iii) A *tripartite escrow agreement*. The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit.* The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable form, executable by the contracting officer.

(v) A deposit of the types of security listed in 28.204-1 and 28.204-2.

(2) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

(c) The contractor shall furnish all bonds or alternative payment protection, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

28.102-2 Amount required.

(a) *Definition.* As used in this subsection—

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Contracts exceeding \$100,000 (Miller Act)*—(1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

- (i) 100 percent of the original contract price; and
- (ii) If the contract price increases, an additional amount equal to 100 percent of the increase.

(2) *Payment bonds.* (i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding \$25,000 but not exceeding \$100,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

- (1) 100 percent of the original contract price; and
- (2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

- (1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of 28.203-5(c) or 28.204(b).

28.102-3 Contract clauses.

(a) Insert a clause substantially the same as the clause at 52.228-15, Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed \$100,000. The contracting officer may revise paragraphs (b)(1) and/or (b)(2) of the clause to establish a lower percentage in accordance with 28.102-2(b). If the provision at 52.228-1 is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) Insert the clause at 52.228-13, Alternative Payment Protections, in solicitations and contracts for construction, when the estimated or actual value exceeds \$25,000 but does not exceed \$100,000. Complete the clause by specifying the payment protections selected (see 28.102-1(b)(1)) and the deadline for submission. The contracting officer may revise paragraph (b) of the clause to establish a lower percentage in accordance with 28.102-2(c).

28.103 Performance and payment bonds for other than construction contracts.

28.103-1 General.

(a) Generally, agencies shall not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in 28.103-2 and 28.103-3.

(b) The contractor shall furnish all bonds before receiving a notice to proceed with the work.

(c) No bond shall be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

28.103-2 Performance bonds.

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(4) Contracts are for dismantling, demolition, or removal of improvements.

(b) The Government may require additional performance bond protection when a contract price is increased.

(c) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.

28.103-3 Payment bonds.

(a) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Government's interest.

(b) When a contract price is increased, the Government may require additional bond protection in an amount adequate to protect suppliers of labor and material.

28.103-4 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.228-16, Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. Alternate I shall be used when only performance bonds are required.

28.104 Annual performance bonds.

(a) Annual performance bonds only apply to nonconstruction contracts. They shall provide a gross penal sum applicable to the total amount of all covered contracts.

(b) When the penal sums obligated by contracts are approximately equal to or exceed the penal sum of the annual performance bond, an additional bond will be required to cover additional contracts.

28.105 Other types of bonds.

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

28.105-1 Advance payment bonds.

Advance payment bonds may be required only when the contract contains an advance payment provision and a performance bond is not furnished. The contracting officer shall determine the amount of the advance payment bond necessary to protect the Government.

28.105-2 Patent infringement bonds.

(a) Contracts providing for patent indemnity may require these bonds only if—

(1) A performance bond is not furnished; and

(2) The financial responsibility of the contractor is unknown or doubtful.

(b) The contracting officer shall determine the penal sum.

28.106 Administration.

28.106-1 Bonds and bond-related forms.

The following Standard Forms (SF's) and Optional Forms (OF's) shown in 53.301 and 53.302, shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form:

(a) SF 24, Bid Bond (see 28.101).

(b) SF 25, Performance Bond (see 28.102-1 and 28.106-3(b)).

(c) SF 25-A, Payment Bond (see 28.102-1 and 28.106-3(b)).

(d) SF 25-B, Continuation Sheet (for SF's 24, 25, and 25-A).

(e) SF 28, Affidavit of Individual Surety (see 28.203).

(f) SF 34, Annual Bid Bond (see 28.001).

(g) SF 35, Annual Performance Bond (see 28.104).

(h) SF 273, Reinsurance Agreement for a Miller Act Performance Bond (see 28.202(a)(4)).

(i) SF 274, Reinsurance Agreement for a Miller Act Payment Bond (see 28.202(a)(4)).

(j) SF 275, Reinsurance Agreement in Favor of the United States (see 28.202(a)(4)).

(k) SF 1414, Consent of Surety (see 28.106-5).

(l) SF 1415, Consent of Surety and Increase of Penalty (see 28.106-3).

(m) SF 1416, Payment Bond for Other Than Construction Contracts (see 28.103-3 and 28.106-3(b)).

(n) SF 1418, Performance Bond for Other Than Construction Contracts (see 28.103-2 and 28.106-3(b)).

(o) OF 90, Release of Lien on Real Property (see 28.203-5).

(p) OF 91, Release of Personal Property from Escrow (see 28.203-5).

28.106-2 Substitution of surety bonds.

(a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.

(b) When a new surety bond is approved, the contracting officer shall notify the principal and surety of the original bond of the effective date of the new bond.

28.106-3 Additional bond and security.

(a) When additional bond coverage is required and is secured in whole or in part by the original surety or sureties, agencies shall use Standard Form 1415, Consent of Surety and Increase of Penalty. Standard Form 1415 is authorized for local reproduction, and a copy of the form is furnished for this purpose in Part 53 of the looseleaf edition of the MMAR.

(b) When additional bond coverage is required and is secured in whole or in part by a new surety or by one of the alternatives described in 28.204 in lieu of corporate or individual surety, agencies shall use Standard Form 25, Performance Bond; Standard Form 1418, Performance Bond for Other Than Construction Contracts; Standard Form 25-A, Payment Bond; or Standard Form 1416, Payment Bond for Other Than Construction Contracts.

28.106-4 Contract clause.

(a) The contracting officer shall insert the clause at 52.228-2, Additional Bond Security, in solicitations and contracts when bonds are required.

(b) In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, the contracting officer shall insert the clause at 52.228-12, Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to the Miller Act (see 28.102-1), except for contracts for the acquisition of commercial items as defined in Subpart 2.1.

28.106-5 Consent of surety.

(a) When any contract is modified, the contracting officer shall obtain the consent of surety if—

(1) An additional bond is obtained from other than the original surety;

(2) No additional bond is required and—

(i) The modification is for new work beyond the scope of the original contract; or

(ii) The modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 percent or \$50,000; or

(3) Consent of surety is required for a novation agreement (see Subpart 42.12).

(b) When a contract for which performance or payment is secured by any of the types of security listed in 28.204 is modified as described in paragraph (a) of this subsection, no consent of surety is required.

(c) Agencies shall use Standard Form 1414, Consent of Surety, for all types of contracts.

28.106-6 Furnishing information.

(a) The surety on the bond, upon its written request, may be furnished information on the progress of the work, pay-

ments, and the estimated percentage of completion, concerning the contract for which the bond was furnished.

(b) When a payment bond has been provided, the contracting officer shall, upon request, furnish the name and address of the surety or sureties to any subcontractor or supplier who has furnished or been requested to furnish labor or material for the contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or materials and have not been paid.

(c) When a payment bond has been provided for a contract, the head of the agency or designee shall furnish a certified copy of the bond and the contract for which it was given to any person who makes a request therefor and who furnishes an affidavit that the requestor has supplied labor or materials for such work and payment therefor has not been made or that the requestor is being sued on such bond. The person who makes the request shall be required to pay such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate (see 40 U.S.C. 270(c)).

(d) Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, requires that the Federal Government provide information to subcontractors on payment bonds under contracts for other than commercial items as defined in Subpart 2.1. Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Miller Act, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

(1) Name and address of the surety or sureties on the payment bond.

(2) Penal amount of the payment bond.

(3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

28.106-7 Withholding contract payments.

(a) During contract performance, agencies shall not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid.

(b) If, after completion of the contract work, the Government receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the contracting officer shall withhold final payment. However, the surety must agree to hold the Government harmless from any liability resulting from withholding the final payment. The contracting officer will authorize final payment upon agreement between the contractor and surety or upon a judicial determination of the rights of the parties.

(c) For any withholding incident to the labor standards provisions of the contract, see Part 22.

28.106-8 Payment to subcontractors or suppliers.

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the

rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

Subpart 28.2—Sureties and Other Security for Bonds

28.200 Scope of subpart.

This subpart prescribes procedures for the use of sureties and other security to protect the Government from financial losses.

28.201 Requirements for security.

(a) MMS shall obtain adequate security for bonds (including coinsurance and reinsurance agreements) required or used with a contract for supplies or services (including construction). Acceptable forms of security include—

(1) Corporate or individual sureties; or

(2) Any of the types of security authorized in lieu of sureties by 28.204.

(b) Solicitations shall not preclude offerors from using the types of surety or other security permitted by this subpart, unless prohibited by law or regulation.

28.202 Acceptability of corporate sureties.

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States, its possessions, or Puerto Rico must appear on the list contained in the Department of Treasury Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies.”

(2) The penal amount of the bond should not exceed the surety’s underwriting limit stated in the Department of the Treasury circular. If the penal amount exceeds the underwriting limit, the bond will be acceptable only if—

(i) The amount which exceeds the specified limit is coinsured or reinsured; and

(ii) The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(3) Coinsurance or reinsurance agreements shall conform to the Department of the Treasury regulations in 31 CFR 223.10 and 223.11. When reinsurance is contemplated, the contracting office generally shall require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(4) When specified in the solicitation, the contracting officer may accept a bond from the direct writing company in satisfaction of the total bond requirement of the contract. This is permissible until necessary reinsurance agreements are executed, even though the total bond requirement may exceed the insurer’s underwriting limitation. The contractor shall execute and submit necessary reinsurance agreements to the contracting officer within the time specified on the bid form, which may not exceed 45 calendar days after the execution of the bond. The contractor shall use Standard Form 273, Reinsurance Agreement for a Miller Act Performance

Bond, and Standard Form 274, Reinsurance Agreement for a Miller Act Payment Bond, when reinsurance is furnished with Miller Act bonds. Standard Form 275, Reinsurance Agreement in Favor of the United States, is used when reinsurance is furnished with bonds for other purposes.

(b) For contracts performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if the contracting officer determines that it is impracticable for the contractor to use Treasury listed sureties.

(c) The Department of the Treasury issues supplements to Circular 570, notifying all Federal agencies of (1) new approved corporate surety companies and (2) the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. Upon receipt of notification of termination of a company’s authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(d) The Department of the Treasury Circular 570 may be obtained from the—

U.S. Department of the Treasury
Financial Management Service
Surety Bond Branch
401 14th St., SW, 2nd Floor—West Wing
Washington, DC 20227.

28.203 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties, and shall ensure that the surety’s pledged assets are sufficient to cover the bond obligation. (See 28.203-7 for information on excluded individual sureties.)

(b) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute the Standard Form 28 and provide a security interest in accordance with 28.203-1. One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety must accept both joint and several liability to the extent of the penal amount of the bond.

(c) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, the offeror utilizing the individual surety shall be rejected as nonrespon-

sible, except as provided in 28.101-4. A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a competency review. (See 19.602-1(a)(2)(i) and 61 Comp. Gen. 456 (1982).)

(d) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted a reasonable time, as determined by the contracting officer, to substitute an acceptable surety for a surety previously determined to be unacceptable.

(e) When evaluating individual sureties, contracting officers may obtain assistance from the office identified in 28.202(d).

(f) Contracting officers shall obtain the opinion of legal counsel as to the adequacy of the documents pledging the assets prior to accepting the bid guarantee and payment and performance bonds.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

28.203-1 Security interests by an individual surety.

(a) An individual surety may be accepted only if a security interest in assets acceptable under 28.203-2 is provided to the Government by the individual surety. The security interest shall be furnished with the bond.

(b) The value at which the contracting officer accepts the assets pledged must be equal to or greater than the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

(1) An escrow account with a federally insured financial institution in the name of the contracting agency. (See 28.203-2(b)(2) with respect to Government securities in book entry form.) Acceptable securities for deposit in escrow are discussed in 28.203-2. While the offeror is responsible for establishing the escrow account, the terms and conditions must be acceptable to the contracting officer. At a minimum, the escrow account shall provide for the following:

(i) The account must provide the contracting officer the sole and unrestricted right to draw upon all or any part of the funds deposited in the account. A written demand for withdrawal shall be sent to the financial institution, after obtaining the concurrence of legal counsel, by the contracting officer with a copy to the offeror/contractor and to the surety. Within the time period specified in the demand, the financial institution would pay the Government the amount demanded up to the amount on deposit. If any dispute should arise between the Government and the offeror/contractor, the surety, or the subcontractors or suppliers with respect to the offer or contract, the financial institution would be required,

unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government as directed by the contracting officer.

(ii) The financial institution would be authorized to release to the individual surety all or part of the balance of the escrow account, including any accrued interest, upon receipt of written authorization from the contracting officer.

(iii) The Government would not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the account.

(iv) The financial institution would not be liable or responsible for the interpretation of any provisions or terms and conditions of the solicitation or contract.

(v) The financial institution would provide periodic account statements to the contracting officer.

(vi) The terms of the escrow account could not be amended without the consent of the contracting officer.

(2) A lien on real property, subject to the restrictions in 28.203-2 and 28.203-3.

28.203-2 Acceptability of assets.

(a) The Government will accept only cash, readily marketable assets, or irrevocable letters of credit from a federally insured financial institution from individual sureties to satisfy the underlying bond obligations.

(b) Acceptable assets include—

(1) Cash, or certificates of deposit, or other cash equivalents with a federally insured financial institution;

(2) United States Government securities at market value. (An escrow account is not required if an individual surety offers Government securities held in book entry form at a depository institution. In lieu thereof, the individual shall provide evidence that the depository institution has—

(i) Placed a notation against the individual's book entry account indicating that the security has been pledged in favor of the respective agency;

(ii) Agreed to notify the agency prior to maturity of the security; and

(iii) Agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the security interest is formally released by the agency.);

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are—(i) the New York Stock Exchange; (ii) the American Stock Exchange; (iii) the Boston Stock Exchange; (iv) the Cincinnati Stock Exchange; (v) the Midwest Stock Exchange; (vi) the Philadelphia Stock Exchange; (vii) the Pacific Stock Exchange; and (viii) the Spokane Stock Exchange. These assets will be accepted at 90 percent of their 52-week low, as reflected at the time of submission of the bond. Stock

options and stocks on the over-the-counter (OTC) market or NASDQ Exchanges will not be accepted. Assistance in evaluating the acceptability of securities may be obtained from the—

Securities and Exchange Commission
Division of Enforcement
450 Fifth Street NW
Washington, DC 20549.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in subdivision (c)(3)(iii) of this subsection, and located within the 50 United States, its territories, or possessions. These assets will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties' unencumbered market value provided a current appraisal is furnished (see 28.203-3).

(5) Irrevocable letters of credit (ILC) issued by a federally insured financial institution in the name of the contracting agency and which identify the agency and solicitation or contract number for which the ILC is provided.

(c) Unacceptable assets include but are not limited to—

- (1) Notes or accounts receivable;
- (2) Foreign securities;
- (3) Real property as follows:

(i) Real property located outside the United States, its territories, or possessions.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (*e.g.*, jewelry, furs, antiques);

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor;

(6) Corporate assets (*e.g.*, plant and equipment);

(7) Speculative assets (*e.g.*, mineral rights);

(8) Letters of credit, except as provided in 28.203-2(b)(5).

28.203-3 Acceptance of real property.

(a) Whenever a bond with a security interest in real property is submitted, the individual surety shall provide—

(1) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This list entitled List of Approved Attorneys, Abstracters, and Title Companies is available from the—

Title Unit, Land Acquisition Section
Land and Natural Resource Division
Department of Justice
Washington, DC 20530.

This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government under paragraph (d) of this subsection;

(2) Evidence of the amount due under any encumbrance shown in the evidence of title;

(3) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice as promulgated by the—

Appraisal Foundation
1029 Vermont Avenue, NW
Washington, DC 20005.

(b) Failure to provide evidence that the lien has been properly recorded will render the offeror nonresponsible.

(c) The individual surety is liable for the payment of all administrative costs of the Government, including legal fees, associated with the liquidation of pledged real estate.

(d) The following format, or any document substantially the same, shall be used by the surety and recorded in the local recorder's office when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

LIEN ON REAL ESTATE

I/we agree that this instrument constitutes a lien in the amount of \$_____ on the property described in this lien. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property, including the right to satisfy its reasonable administrative costs, including legal fees associated with any sale of subject property, in the event of contractor default if I/we otherwise fail to satisfy the underlying () bid guarantee, () performance bond, () or payment bond obligations as an individual surety on solicitation/contract number _____. The lien is upon the real estate now owned by me/us described as follows:

(legal description, street address and other identifying description)

IN WITNESS WHEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this ___ Day of _____ 19 ___.

WITNESS:

_____ (Seal)

_____ (Seal)

I, _____, a Notary Public in and for the (City) _____, (State) _____, do hereby certify that _____, a party or parties to a certain Agreement bearing the date ____ day of _____ 19 __, and hereunto annexed, personally appeared before me, the said _____ being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her heir act and deed.

GIVEN under my hand and seal this ____ day of ____ 19 __.

Notary Public, State

MY COMMISSION EXPIRES:

28.203-4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The contracting officer may agree to the substitution of assets upon determining, after consultation with legal counsel, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in Subpart 28.2.

28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the Optional Form 90, Release of Lien on Real Property, or Optional Form 91, Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in paragraphs (a)(1) and (2) of this subsection. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Miller Act.* The security interest shall be maintained for the later of—

- (i) 1 year following final payment;
- (ii) Until completion of any warranty period (applicable only to performance bonds); or
- (iii) Pending resolution of all claims filed against the payment bond during the 1-year period following final payment.

(2) *Contracts subject to alternative payment protection (28.102-1(b)(1)).* The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Miller Act.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request, the contracting officer may release the security interest on the individual surety's assets in support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the paragraphs (a)(1) through (3) of this subsection. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the lien is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

28.203-6 Contract clause.

Insert the clause at 52.228-11 in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in Subpart 9.4. The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

- (1) Failure to fulfill the obligations under any bond.
- (2) Failure to disclose all bond obligations.
- (3) Misrepresentation of the value of available assets or outstanding liabilities.
- (4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.
- (5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this subsection shall be included on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs. (See 9.404.)

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see 9.404) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this subsection will also preclude such party from acting as a contractor in accordance with Subpart 9.4.

28.204 Alternatives in lieu of corporate or individual sureties.

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in 28.204-1 through 28.204-3 instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in 28.204-1 through 28.204-3, the contracting officer may release a portion of the security only when the conditions allowing the partial release of lien in 28.203-5(c) are met. The contractor shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in 28.204-1 through 28.204-3 or a combination of bonds supported by these types of security and additional surety bonds under 28.202 or 28.203. During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in 28.204-1 through 28.204-3 for another, or may substitute, in whole or combination, additional surety bonds under 28.202 or 28.203.

28.204-1 United States bonds or notes.

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 (31 U.S.C. 9303) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of

the principal on the bond shall accompany the deposited bonds or notes. The contracting officer may—

(a) Turn securities over to the finance or other authorized agency official; or

(b) Deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: The contracting officer shall deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall draw them to the order of the appropriate Federal agency.

28.204-3 Irrevocable letter of credit (ILC).

(a) Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured (see 28.204). A separate ILC is required for each bond.

(b) The ILC shall be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at 52.228-14, and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) The period for which financial security is required shall be as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(1) The offeror/contractor shall provide the contracting officer a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7 (see 28.204-3(h)) that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at 52.228-14.

(h)(1) Additional information on credit rating services and investment grade ratings is contained within Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395-7332.

(2) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, is available from:

ICC Publishing, Inc.
156 Fifth Avenue
New York NY 10010

Telephone: (212) 206-1150
Telefax: (212) 633-6025
E-mail: iccpub@interport.net.

28.204-4 Contract clause.

Insert the clause at 52.228-14, Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

Subpart 28.3—Insurance

28.301 Policy.

Contractors shall be required to carry insurance under the following circumstances:

(a)(1) The Government requires any contractor subject to Cost Accounting Standard (CAS) 416 (48 CFR 9004.416 (Appendix, MMAR looseleaf edition)) to obtain insurance, by purchase or self-coverage, for the perils to which the contractor is exposed, except when—

(i) The Government, by providing in the contract in accordance with law, agrees to indemnify the contractor under specified circumstances; or

(ii) The contract specifically relieves the contractor of liability for loss of or damage to Government property.

(2) The Government reserves the right to disapprove the purchase of any insurance coverage not in the Government's interest.

(3) Allowability of the insurance program's cost shall be determined in accordance with the criteria in 31.205-19.

(b) Contractors, whether or not their contracts are subject to CAS 416, are required by law and this regulation to provide insurance for certain types of perils (*e.g.*, workers' compensation). Insurance is mandatory also when commingling of property, type of operation, circumstances of ownership, or condition of the contract make it necessary for the protection of the Government. The minimum amounts of insurance required by this regulation (see 28.307-2) may be reduced when a contract is to be performed outside the United States, its possessions, and Puerto Rico. When more than one agency is involved, the agency responsible for review and approval of a contractor's insurance program shall coordinate with other interested agencies before acting on significant insurance matters.

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

28.302 Notice of cancellation or change.

When the Government requires the contractor to provide insurance coverage, the policies shall contain an endorsement that any cancellation or material change in the coverage adversely affecting the Government's interest shall not be effective unless the insurer or the contractor gives written notice of cancellation or change as required by the contracting officer. When the coverage is provided by self-insurance, the contractor shall not change or decrease the coverage without the administrative contracting officer's prior approval (see 28.308(c)).

28.303 Insurance against loss of or damage to Government property.

When the Government requires or approves insurance to cover loss of or damage to Government property (see 45.103, Responsibility and liability for Government property), it may be provided by specific insurance policies or by inclusion of the risks in the contractor's existing policies. The policies shall disclose the Government's interest in the property.

28.304 Risk-pooling arrangements.

MMS may establish risk-pooling arrangements. These arrangements are designed to use the services of the insurance industry for safety engineering and the handling of claims at minimum cost to the Government.

28.305 [Reserved]

28.306 Insurance under fixed-price contracts.

(a) *General.* Although the Government is not ordinarily concerned with the contractor's insurance coverage if the contract is a fixed-price contract, in special circumstances agencies may specify insurance requirements under fixed-price contracts. Examples of such circumstances include the following:

(1) The contractor is, or has a separate operation, engaged principally in Government work.

(2) Government property is involved.

(3) The work is to be performed on a Government installation.

(4) The Government elects to assume risks for which the contractor ordinarily obtains commercial insurance.

(b) *Work on a Government installation.* (1) When the clause at 52.228-5, Insurance—Work on a Government Installation, is required to be included in a fixed-price contract by 28.310, the coverage specified in 28.307 is the minimum insurance required and shall be included in the contract Schedule or elsewhere in the contract. The contracting officer may require additional coverage and higher limits.

(2) When the clause at 52.228-5, Insurance—Work on a Government Installation, is not required by 28.310 but is included because the contracting officer considers it to be in the Government's interest to do so, any of the types of insurance specified in 28.307 may be omitted or the limits may be lowered, if appropriate.

28.307 Insurance under cost-reimbursement contracts.

Cost-reimbursement contracts (and subcontracts, if the terms of the prime contract are extended to the subcontract) ordinarily require the types of insurance listed in 28.307-2, with the minimum amounts of liability indicated. (See 28.308 for self-insurance.)

28.307-1 Group insurance plans.

(a) *Prior approval requirement.* Under cost-reimbursement contracts, before buying insurance under a group insurance plan, the contractor must submit the plan for approval, in accordance with agency regulations. Any change in benefits provided under an approved plan that can reasonably be expected to increase significantly the cost to the Government requires similar approval.

(b) *Premium refunds or credits.* The plan shall provide for the Government to share in any premium refunds or credits paid or otherwise allowed to the contractor. In determining the extent of the Government's share in any premium refunds or credits, any special reserves and other refunds to which the contractor may be entitled in the future shall be taken into account.

28.307-2 Liability.

(a) *Workers' compensation and employer's liability.* Contractors are required to comply with applicable Federal and State workers' compensation and occupational disease statutes. If occupational diseases are not compensable under those statutes, they shall be covered under the employer's liability section of the insurance policy, except when contract operations are so commingled with a contractor's commercial operations that it would not be practical to require this coverage. Employer's liability coverage of at least \$100,000 shall be required, except in States with exclusive or monopolistic funds that do not permit workers' compensation to be written by private carriers. (See 28.305(c) for treatment of contracts subject to the Defense Base Act.)

(b) *General liability.* (1) The contracting officer shall require bodily injury liability insurance coverage written on the comprehensive form of policy of at least \$500,000 per occurrence.

(2) Property damage liability insurance shall be required only in special circumstances as determined by the agency.

(c) *Automobile liability.* The contracting officer shall require automobile liability insurance written on the comprehensive form of policy. The policy shall provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with performing the contract. Policies covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily injury and \$20,000 per occurrence for property damage. The amount of liability coverage on other policies shall be commensurate with any legal requirements of the locality and sufficient to meet normal and customary claims.

(d) *Aircraft public and passenger liability.* When aircraft are used in connection with performing the contract, the contracting officer shall require aircraft public and passenger liability insurance. Coverage shall be at least \$200,000 per

person and \$500,000 per occurrence for bodily injury, other than passenger liability, and \$200,000 per occurrence for property damage. Coverage for passenger liability bodily injury shall be at least \$200,000 multiplied by the number of seats or passengers, whichever is greater.

(e) *Vessel liability.* When contract performance involves use of vessels, the contracting officer shall require, as determined by the agency, vessel collision liability and protection and indemnity liability insurance.

28.308 Self-insurance.

(a) When it is anticipated that 50 percent or more of the self-insurance costs to be incurred at a segment of a contractor's business will be allocable to negotiated Government contracts, and the self-insurance costs at the segment for the contractor's fiscal year are expected to be \$200,000 or more, the contractor shall submit, in writing, information on its proposed self-insurance program to the administrative contracting officer and obtain that official's approval of the program. The submission shall be by segment or segments of the contractor's business to which the program applies and shall include—

(1) A complete description of the program, including any resolution of the board of directors authorizing and adopting coverage, including types of risks, limits of coverage, assignments of safety and loss control, and legal service responsibilities;

(2) If available, the corporate insurance manual and organization chart detailing fiscal responsibilities for insurance;

(3) The terms regarding insurance coverage for any Government property;

(4) The contractor's latest financial statements;

(5) Any self-insurance feasibility studies or insurance market surveys reporting comparative alternatives;

(6) Loss history, premiums history, and industry ratios;

(7) A formula for establishing reserves, including percentage variations between losses paid and losses reserved;

(8) Claims administration policy, practices, and procedures;

(9) The method of calculating the projected average loss; and

(10) A disclosure of all captive insurance company and reinsurance agreements, including methods of computing cost.

(b) Programs of self-insurance covering a contractor's insurable risks, including the deductible portion of purchased insurance, may be approved when examination of a program indicates that its application is in the Government's interest. Agencies shall not approve a program of self-insurance for workers' compensation in a jurisdiction where workers' compensation does not completely cover the employer's liability to employees, unless the contractor—

(1) Maintains an approved program of self-insurance for any employer's liability not so covered; or

(2) Shows that the combined cost to the Government of self-insurance for workers' compensation and commercial insurance for employer's liability will not exceed the cost of covering both kinds of risk by commercial insurance.

(c) Once the administrative contracting officer has approved a program, the contractor must submit to that official for approval any major proposed changes to the program. Any program approval may be withdrawn if a contracting officer finds that either—

(1) Any part of a program does not comply with the requirements of this subpart and/or the criteria at 31.205-19; or

(2) Conditions or situations existing at the time of approval that were a basis for original approval of the program have changed to the extent that a program change is necessary.

(d) To qualify for a self-insurance program, a contractor must demonstrate ability to sustain the potential losses involved. In making the determination, the contracting officer shall consider the following factors:

(1) The soundness of the contractor's financial condition, including available lines of credit.

(2) The geographic dispersion of assets, so that the potential of a single loss depleting all the assets is unlikely.

(3) The history of previous losses, including frequency of occurrence and the financial impact of each loss.

(4) The type and magnitude of risk, such as minor coverage for the deductible portion of purchased insurance or major coverage for hazardous risks.

(5) The contractor's compliance with Federal and State laws and regulations.

(e) Agencies shall not approve a program of self-insurance for catastrophic risks (*e.g.*, see 50.403, Special procedures for unusually hazardous or nuclear risks). Should performance of Government contracts create the risk of catastrophic losses, the Government may, to the extent authorized by law, agree to indemnify the contractor or recognize an appropriate share of premiums for purchased insurance, or both.

(f) Self-insurance programs to protect a contractor against the costs of correcting its own defects in materials or workmanship shall not be approved. For these purposes, normal rework estimates and warranty costs will not be considered self-insurance.

28.309 Contract clauses for workers' compensation insurance.

(a) The contracting officer shall insert the clause at 52.228-3, Workers' Compensation Insurance (Defense Base Act), in solicitations and contracts when the Defense Base Act applies (see 28.305) and—

(1) The contract will be a public-work contract performed outside the United States; or

(2) The contract will be approved or financed under the Foreign Assistance Act of 1961 (Pub. L. 87-195) and is not excluded by 28.305(b)(2).

(b) The contracting officer shall insert the clause at 52.228-4, Worker's Compensation and War-Hazard Insurance Overseas, in solicitations and contracts when the contract will be a public-work contract performed outside the United States and the Secretary of Labor waives the applicability of the Defense Base Act (see 28.305(d)).

28.310 Contract clause for work on a Government installation.

(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the contract will require work on a Government installation, unless—

(1) Only a small amount of work is required on the Government installation (*e.g.*, a few brief visits per month); or

(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.

(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in paragraphs (a)(1) and (2) of this section if it is in the Government's interest to do so.

28.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

28.311-1 Contract clause.

In accordance with agency acquisition regulations, the contracting officer shall insert the clause at 52.228-7, Insurance—Liability to Third Persons, in solicitations and contracts, other than those for construction contracts and those for architect-engineer services, when a cost-reimbursement contract is contemplated.

28.311-2 Agency solicitation provisions and contract clauses.

Agencies may prescribe their own solicitation provisions and contract clauses to implement the basic policies contained in this Subpart 28.3.

28.312 Contract clause for insurance of leased motor vehicles.

The contracting officer shall insert the clause at 52.228-8, Liability and Insurance—Leased Motor Vehicles, in solicita-

tions and contracts for the leasing of motor vehicles (see Subpart 8.11).

28.313 Contract clauses for insurance of transportation or transportation-related services.

(a) The contracting officer shall insert the clause at 52.228-9, Cargo Insurance, in solicitations and contracts for transportation or for transportation-related services, except

when freight is shipped under rates subject to released or declared value.

(b) The contracting officer shall insert a clause substantially the same as that at 52.228-10, Vehicular and General Public Liability Insurance, in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient.

* * * * *

FAC 2001-13 APRIL 17, 2003

PART 29—TAXES

Sec.

29.000	Scope of part.	29.303	Application of State and local taxes to Government contractors and subcontractors.
	Subpart 29.1—General	29.304	Matters requiring special consideration.
29.101	Resolving tax problems.	29.305	State and local tax exemptions.
	Subpart 29.2—Federal Excise Taxes		Subpart 29.4—Contract Clauses
29.201	General.	29.401	Domestic contracts.
29.202	General exemptions.	29.401-1	Indefinite-delivery contracts for leased equipment.
29.203	Other Federal tax exemptions.	29.401-2	Construction contracts performed in North Carolina.
	Subpart 29.3—State and Local Taxes	29.401-3	Federal, State, and local taxes.
29.300	Scope of subpart.	29.401-4	[Reserved]
29.301	[Reserved]	29.402	Foreign contracts.
29.302	Application of State and local taxes to the Government.	29.402-1	Foreign fixed-price contracts.
		29.402-2	Foreign cost-reimbursement contracts.

This page intentionally left blank.

29.000 Scope of part.

This part prescribes policies and procedures for (a) using tax clauses in contracts (including foreign contracts), (b) asserting immunity or exemption from taxes, and (c) obtaining tax refunds. It explains Federal, State, and local taxes on certain supplies and services acquired by executive agencies and the applicability of such taxes to the Federal Government. It is for the general information of MMS personnel and does not present the full scope of the tax laws and regulations.

Subpart 29.1—General**29.101 Resolving tax problems.**

(a) Contract tax problems are essentially legal in nature and vary widely. Specific tax questions must be resolved by reference to the applicable contract terms and to the pertinent tax laws and regulations. Therefore, when tax questions arise, contracting officers should request assistance from the Office of General Counsel.

(b) To keep treatment within an agency consistent, contracting officers or other authorized personnel shall consult

the Office of General Counsel before negotiating with any taxing authority for the purpose of—

(1) Determining whether or not a tax is valid or applicable; or

(2) Obtaining exemption from, or refund of, a tax.

(c) When the constitutional immunity of the Government from State or local taxation may reasonably be at issue, contractors should be discouraged from negotiating independently with taxing authorities if the contract involved is either—

(1) A cost-reimbursement contract; or

(2) A fixed-price contract containing a tax escalation clause.

(d) Before purchasing goods or services from a foreign source, the contracting officer should consult the agency-designated counsel—

(1) For information on foreign tax treaties and agreements in force and on the implementation of any foreign-tax-relief programs; and

(2) To resolve any other tax questions affecting the prospective contract.

Subpart 29.2—Federal Excise Taxes

29.201 General.

(a) Federal excise taxes are levied on the sale or use of particular supplies or services. Subtitle D of the Internal Revenue Code of 1954, Miscellaneous Excise Taxes, 26 U.S.C. 4041, *et seq.*, and its implementing regulations, 26 CFR parts 40 through 299, cover miscellaneous federal excise tax requirements. Questions arising in this area should be directed to the Office of General Counsel. The most common excise taxes are—

(1) Manufacturers' excise taxes imposed on certain motor-vehicle articles, tires and inner tubes, gasoline, lubricating oils, coal, fishing equipment, firearms, shells, and cartridges sold by manufacturers, producers, or importers; and

(2) Special-fuels excise taxes imposed at the retail level on diesel fuel and special motor fuels.

(b) Sometimes the law exempts the Federal Government from these taxes. Contracting officers should solicit prices on a tax-exclusive basis when it is known that the Government is exempt from these taxes, and on a tax-inclusive basis when no exemption exists.

(c) MMS shall take maximum advantage of available Federal excise tax exemptions.

29.202 General exemptions.

No Federal manufacturers' or special-fuels excise taxes are imposed in many contracting situations as, for example, when the supplies are for any of the following:

(a) The exclusive use of any State or political subdivision, including the District of Columbia (26 U.S.C. 4041 and 4221).

(b) Shipment to a United States possession or Puerto Rico, or for export. Shipment or export must occur within 6 months of the time title passes to the Government. When the exemption is claimed, the words "for export or shipment

to a possession" must appear on the contract or purchase document, and the contracting officer must furnish the seller proof of export (see 26 CFR 48.4221-3).

(c) Further manufacture, or resale for further manufacture (this exemption does not include tires and inner tubes) (26 CFR 48.4221-2).

(d) Use as fuel supplies, ships or sea stores, or legitimate equipment on vessels of war, including (1) aircraft owned by the United States and constituting a part of the armed forces and (2) guided missiles and pilotless aircraft owned or chartered by the United States. When this exemption is to be claimed, the purchase should be made on a tax-exclusive basis. The contracting officer shall furnish the seller an exemption certificate for Supplies for Vessels of War (an example is given in 26 CFR 48.4221-4(d)(2)); the IRS will accept one certificate covering all orders under a single contract for a specified period of up to 12 calendar quarters) (26 U.S.C. 4041 and 4221).

(e) A nonprofit educational organization (26 U.S.C. 4041 and 4221).

(f) Emergency vehicles (26 U.S.C. 4053 and 4064(b)(1)(c)).

29.203 Other Federal tax exemptions.

(a) Pursuant to 26 U.S.C. 4293, the Secretary of the Treasury has exempted the United States from the communications excise tax imposed in 26 U.S.C. 4251, when the supplies and services are for the exclusive use of the United States. (Secretarial Authorization, June 20, 1947, Internal Revenue Cumulative Bulletin, 1947-1, 205.)

(b) Pursuant to 26 U.S.C. 4483(b), the Secretary of the Treasury has exempted the United States from the federal highway vehicle users tax imposed in 26 U.S.C. 4481. The exemption applies whether the vehicle is owned or leased by the United States. (Secretarial Authorization, Internal Revenue Cumulative Bulletin, 1956-2, 1369.)

Subpart 29.3—State and Local Taxes

29.300 Scope of subpart.

This subpart prescribes the policies and procedures regarding the exemption or immunity of Federal Government purchases and property from State and local taxation.

29.301 [Reserved]

29.302 Application of State and local taxes to the Government.

(a) Generally, purchases and leases made by the Federal Government are immune from State and local taxation. Whether any specific purchase or lease is immune, however, is a legal question requiring advice and assistance of the agency-designated counsel.

(b) When it is economically feasible to do so, MMS shall take maximum advantage of all exemptions from State and local taxation that may be available. If appropriate, the contracting officer shall provide a Standard Form 1094, U.S. Tax Exemption Form (see Part 53), or other evidence listed in 29.305(a) to establish that the purchase is being made by the Government.

29.303 Application of State and local taxes to Government contractors and subcontractors.

(a) Prime contractors and subcontractors shall not normally be designated as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes. Before any activity contends that a contractor is an agent of the Government, the matter shall be referred to the agency head for review. The referral shall include all pertinent data on which the contention is based, together with a thorough analysis of all relevant legal precedents.

(b) When purchases are not made by the Government itself, but by a prime contractor or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or, in some cases, the transaction may not in fact be expressly exempt from the tax. The Government's interest shall be protected by using the procedures in 29.101.

(c) Frequently, property (including property acquired under the progress payments clause of fixed-price contracts or the Government property clause of cost-reimbursement contracts) owned by the Government is in the possession of a contractor or subcontractor. Situations may arise in which States or localities assert the right to tax Government property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property. In such cases, the contracting officer shall seek review and advice from the

agency-designated counsel on the appropriate course of action.

29.304 Matters requiring special consideration.

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

(a) With coordination of the Office of General Counsel, a contract may (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.

(b) The applicability of State and local taxes to purchases by the Federal Government may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.

(c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the contract clause to be included in contracts when delivery points are not known at time of contracting.

(d) *The North Carolina State and local sales and use tax.*
 (1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In *United States v. Clayton*, 250 F. Supp. 827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.

(2) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the prop-

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

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

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

29.305 State and local tax exemptions.

(a) *Evidence of exemption.* Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and

the requirements of the taxing jurisdiction. Such evidence may include the following:

- (1) A copy of the contract or relevant portion.
- (2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
- (3) A U.S. Tax Exemption Form (SF 1094).
- (4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.
- (5) Any other State or locally required document for establishing general or specific exemption.
- (6) Shipping documents indicating that shipments are in interstate or foreign commerce.

(b) *Furnishing proof of exemption.* If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:

(1) Under a contract containing the clause at 52.229-3, Federal, State, and Local Taxes, or at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses.

(2) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.

(3) Under a contract or purchase order that contains no tax provision, if—

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

Subpart 29.4—Contract Clauses

29.401 Domestic contracts.

29.401-1 Indefinite-delivery contracts for leased equipment.

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

29.401-2 Construction contracts performed in North Carolina.

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

29.401-3 Competitive contracts.

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

29.401-4 Noncompetitive contracts.

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

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

29.401-5 [Reserved]

29.402 Foreign contracts.

29.402-1 Foreign fixed-price contracts.

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

(b) The contracting officer shall insert the clause at 52.229-7, Taxes—Fixed-Price Contracts with Foreign Governments, in solicitations and contracts that exceed the simplified acquisition threshold when a fixed-price contract with a foreign government is contemplated.

29.402-2 Foreign cost-reimbursement contracts.

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

(b) The contracting officer shall insert the clause at 52.229-9, Taxes—Cost-Reimbursement Contracts with Foreign Governments, in solicitations and contracts when a cost-reimbursement contract with a foreign government is contemplated.

* * * * *

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

30.000 Scope of part.

Subpart 30.1—General

30.101 Cost Accounting Standards.

30.102 Cost Accounting Standards Board Publication.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

30.201-1 CAS applicability.

30.201-2 Types of CAS coverage.

30.201-3 Solicitation provisions.

30.201-4 Contract clauses.

30.201-5 Waiver.

30.201-6 Findings.

30.201-7 Cognizant Federal agency responsibilities.

30.202 Disclosure requirements.

30.202-1 General requirements.

30.202-2 Impracticality of submission.

30.202-3 Amendments and revisions.

30.202-4 Privileged and confidential information.

30.202-5 Filing Disclosure Statements.

30.202-6 Responsibilities.

30.202-7 Determinations.

30.202-8 Subcontractor Disclosure Statements.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Subpart 30.4—Cost Accounting Standards [Reserved]

Subpart 30.5—Cost Accounting Standards for Educational Institutions [Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

30.602 Changes to disclosed or established cost accounting practices.

30.602-1 Equitable adjustments for new or modified standards.

30.602-2 Noncompliance with CAS requirements.

30.602-3 Voluntary changes.

30.603 Subcontract administration.

This page intentionally left blank.

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR 9903.201-1(b) (FAR Appendix) for these and other exemptions).

Subpart 30.1—General**30.101 Cost Accounting Standards.**

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this Part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR Chapter 99), all of which are hereby incorporated in this Part 30.

(c) The Appendix to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in title 48 of the *Code of Federal Regulations*, Chapter 99, and may be obtained by writing the—

Superintendent of Documents
US Government Printing Office
Washington, DC 20402

or by calling the Washington, DC, ordering desk at (202) 512-1800.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

Title 48 CFR 9903.201-1 (FAR Appendix) describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with 48 CFR 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR 9903.201-2 (FAR Appendix).

30.201-1 CAS applicability.

See 48 CFR 9903.201-1 (FAR Appendix).

30.201-2 Types of CAS coverage.

See 48 CFR 9903.201-2 (FAR Appendix).

30.201-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

(b) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall insert the basic provision set forth at 52.230-1 with its Alternate I, unless the contract is to be performed by a Federally Funded Research and Development Center (FFRDC) (see 48 CFR 9903.201-2(c)(5) (FAR Appendix)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR Appendix) applies.

30.201-4 Contract clauses.

(a) *Cost accounting standards.* (1) The contracting officer shall insert the clause at FAR 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is subject to modified coverage (see 48 CFR 9903.201-2 (FAR Appendix)), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230-2 requires the contractor to comply with all CAS specified in 48 CFR 9904 (FAR Appendix), to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

(b) *Disclosure and consistency of cost accounting practices.* (1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230-3 requires the contractor to comply with 48 CFR 9904.401, 9904.402, 9904.405, and 9904.406 (FAR Appendix) to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in cost accounting practices.* The contracting officer shall insert the clause at FAR 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR 9903.201-1(b)(12) (FAR Appendix)).

(d) *Administration of cost accounting standards.* (1) The contracting officer shall insert the clause at FAR 52.230-6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of this subsection.

(2) The clause at FAR 52.230-6 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(e) *Cost accounting standards—educational institutions.* (1) The contracting officer shall insert the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR Appendix)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201-2(c)(5) (FAR Appendix)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR Appendix) applies.

(2) The clause at FAR 52.230-5 requires the educational institution to comply with all CAS specified in 48 CFR 9905 (FAR Appendix), to disclose actual cost accounting practices as required by 48 CFR 9903.202-1(f) (FAR Appendix), and to follow disclosed and established cost accounting practices consistently.

30.201-5 Waiver.

(a) The Public Printer—

(1) May waive the applicability of CAS for a particular contract or subcontract under the conditions listed in paragraph (b) of this subsection; and

(2) Must not delegate this waiver authority to any official in the agency below the senior contract policymaking level.

(b) The Public Printer may grant a waiver when one of the following conditions exists:

(1) The contract or subcontract value is less than \$15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract—

(i) Is primarily engaged in the sale of commercial items; and

(ii) Has no contracts or subcontracts that are subject to CAS.

(2) The Public Printer determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Exceptional circumstances exist only when the benefits to be derived from waiving the CAS outweigh the risk associated with the waiver. The determination that exceptional circumstances exist must—

(i) Be set forth in writing; and

(ii) Include a statement of the specific circumstances that justify granting the waiver.

(c) When one of the conditions in paragraph (b) of this subsection exists, the request for waiver should include the following:

(1) The amount of the proposed award.

(2) A description of the contract or subcontract type (e.g., firm-fixed-price, cost-reimbursement).

(3) Whether the segment(s) that will perform the contract or subcontract has CAS-covered contracts or subcontracts.

(4) A description of the item(s) being procured.

(5) When the contractor or subcontractor will not accept the contract or subcontract if CAS applies, a statement to that effect.

(6) Whether cost or pricing data will be obtained, and if so, a discussion of how the data will be used in negotiating the contract or subcontract price.

(7) The benefits to the Government of waiving CAS.

(8) The potential risk to the Government of waiving CAS.

(9) The date by which the waiver is needed.

(10) Any other information that may be useful in evaluating the request.

(d) When neither of the conditions in paragraph (b) of this subsection exists, the waiver request must be prepared in accordance with 48 CFR 9903.201-5(e) (FAR Appendix) and submitted to the CAS Board.

(e) MMS must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

30.201-6 Findings.

See 48 CFR 9903.201-6 (FAR Appendix).

30.201-7 Cognizant Federal agency responsibilities.

See 48 CFR 9903.201-7 (FAR Appendix).

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR 9903.202-1 (FAR Appendix).

30.202-2 Impracticality of submission.

See 48 CFR 9903.202-2 (FAR Appendix).

30.202-3 Amendments and revisions.

See 48 CFR 9903.202-3 (FAR Appendix).

30.202-4 Privileged and confidential information.

See 48 CFR 9903.202-4 (FAR Appendix).

30.202-5 Filing Disclosure Statements.

See 48 CFR 9903.202-5 (FAR Appendix).

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted. (Also see 48 CFR 9903.201-3 and 9903.202 (FAR Appendix).)

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* As prescribed by 48 CFR 9903.202-6 (FAR Appendix), the cognizant auditor shall conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the cognizant auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the cognizant auditor shall conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with Part 31 shall be processed separately, in accordance with normal administrative practices.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall provide such determination to the ACO cognizant of the prime contractor or next higher tier subcontractor. The ACO cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR 9903.202-2 (FAR Appendix).

**Subpart 30.3—CAS Rules and Regulations
[Reserved]**

NOTE: See 48 CFR 9903.3 (FAR Appendix B).

**Subpart 30.4—Cost Accounting Standards
[Reserved]**

NOTE: See 48 CFR Part 9904 (FAR Appendix B).

**Subpart 30.5—Cost Accounting Standards for
Educational Institutions [Reserved]**

NOTE: See 48 CFR Part 9905 (FAR Appendix B).

Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days after the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see Subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR 9903.305 (FAR Appendix). The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of non-compliance issues, the ACO shall inform the contractor that—

(a) The Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material; and

(b) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.602-1 Equitable adjustments for new or modified standards.

(a) *New or modified standards.* (1) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the ACO.

(2) Contracts and subcontracts containing the clause at FAR 52.230-2, Cost Accounting Standards, or FAR 52.230-5, Cost Accounting Standards—Educational Institution, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause at 52.230-2 or 52.230-5 is awarded on or after the effective date of the new or modified standard.

(3) Contracting officers shall encourage contractors to submit to the ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the CASB.

(b) *Accounting changes.* (1) The clause at FAR 52.230-6, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The ACO, with the assistance of the auditor, shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The ACO shall invite contracting officers to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by \$10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each

subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.* (1) Within 15 days of the receipt of a report of alleged noncompliance from the cognizant auditor, the ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall review the contractor submissions required by paragraph (a) of the clause at FAR 52.230-6, Administration of Cost Accounting Standards.

(4) If the contractor disagrees with the initial noncompliance finding, the ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. If the ACO determines that the contractor's practices are in noncompliance, a written explanation shall be provided as to why the ACO disagrees with the contractor's rationale. The ACO shall notify the contractor and the auditor in writing of the determination. If the ACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, shall be followed.

(b) *Accounting changes.* (1) The clause at FAR 52.230-6, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall request that the contractor submit a cost impact proposal within the time specified in the clause at FAR 52.230-6, Administration of Cost Accounting Standards.

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1). In accordance with the clause at 52.230-2, Cost Accounting Standards, or 52.230-5, Cost Accounting Standards—Educational Institution, the ACO shall include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest shall be computed from the date of overpayment to the time the adjustment is effected. If the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest under 52.230-2 should be computed pursuant to Public Law 100-679.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the cognizant auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment together with any applicable interest as computed in accordance with 30.602-2(c)(2). The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

(3) If the ACO determines that there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230-2, Cost Accounting Standards, 52.230-5, Cost Accounting Standards—Educational Institution, and/or the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602-3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosed or established cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the interest of the Government.

(b) *Accounting changes.* (1) The clause at FAR 52.230-6, Administration of Cost Accounting Standards, requires the contractor to notify the ACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(2) The ACO, with the assistance of the cognizant auditor, shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) The ACO shall then follow the procedures in 30.602-1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the cognizant auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is appropriate (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233-1, Disputes.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor or next higher tier subcontractor of the decision. The ACOs cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

- 31.000 Scope of part.
 - 31.001 Definitions.
 - 31.002 Availability of accounting guide.
- Subpart 31.1—Applicability**
- 31.100 Scope of subpart.
 - 31.101 Objectives.
 - 31.102 Fixed-price contracts.
 - 31.103 Contracts with commercial organizations.
 - 31.104 Contracts with educational institutions.
 - 31.105 Construction and architect-engineer contracts.
 - 31.106 Facilities contracts.
 - 31.106-1 Applicable cost principles.
 - 31.106-2 Exceptions to general rules on allowability and allocability.
 - 31.106-3 Contractor's commercial items.
 - 31.107 Contracts with State, local, and federally recognized Indian tribal governments.
 - 31.108 Contracts with nonprofit organizations.
 - 31.109 Advance agreements.
 - 31.110 Indirect cost rate certification and penalties on unallowable costs.
- Subpart 31.2—Contracts with Commercial Organizations**
- 31.201 General.
 - 31.201-1 Composition of total cost.
 - 31.201-2 Determining allowability.
 - 31.201-3 Determining reasonableness.
 - 31.201-4 Determining allocability.
 - 31.201-5 Credits.
 - 31.201-6 Accounting for unallowable costs.
 - 31.201-7 Construction and architect-engineer contracts.
 - 31.202 Direct costs.
 - 31.203 Indirect costs.
 - 31.204 Application of principles and procedures.
 - 31.205 Selected costs.
 - 31.205-1 Public relations and advertising costs.
 - 31.205-2 [Reserved]
 - 31.205-3 Bad debts.
 - 31.205-4 Bonding costs.
 - 31.205-5 [Reserved]
 - 31.205-6 Compensation for personal services.
 - 31.205-7 Contingencies.
 - 31.205-8 Contributions or donations.
 - 31.205-9 [Reserved]
 - 31.205-10 Cost of money.
 - 31.205-11 Depreciation.
 - 31.205-12 Economic planning costs.
 - 31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.
 - 31.205-14 Entertainment costs.
 - 31.205-15 Fines, penalties, and mischarging costs.
 - 31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.
 - 31.205-17 Idle facilities and idle capacity costs.
 - 31.205-18 Independent research and development and bid and proposal costs.
 - 31.205-19 Insurance and indemnification.
 - 31.205-20 Interest and other financial costs.
 - 31.205-21 Labor relations costs.
 - 31.205-22 Lobbying and political activity costs.
 - 31.205-23 Losses on other contracts.
 - 31.205-24 Maintenance and repair costs.
 - 31.205-25 Manufacturing and production engineering costs.
 - 31.205-26 Material costs.
 - 31.205-27 Organization costs.
 - 31.205-28 Other business expenses.
 - 31.205-29 Plant protection costs.
 - 31.205-30 Patent costs.
 - 31.205-31 Plant reconversion costs.
 - 31.205-32 Precontract costs.
 - 31.205-33 Professional and consultant service costs.
 - 31.205-34 Recruitment costs.
 - 31.205-35 Relocation costs.
 - 31.205-36 Rental costs.
 - 31.205-37 Royalties and other costs for use of patents.
 - 31.205-38 Selling costs.
 - 31.205-39 Service and warranty costs.
 - 31.205-40 Special tooling and special test equipment costs.
 - 31.205-41 Taxes.
 - 31.205-42 Termination costs.
 - 31.205-43 Trade, business, technical and professional activity costs.
 - 31.205-44 Training and education costs.
 - 31.205-45 Transportation costs.
 - 31.205-46 Travel costs.
 - 31.205-47 Costs related to legal and other proceedings.
 - 31.205-48 Deferred research and development costs.
 - 31.205-49 Goodwill.
 - 31.205-50 [Reserved]
 - 31.205-51 Costs of alcoholic beverages.
 - 31.205-52 Asset valuations resulting from business combinations.
- Subpart 31.3—Contracts with Educational Institutions**
- 31.301 Purpose.
 - 31.302 General.
 - 31.303 Requirements.

	Subpart 31.4—[Reserved]	31.603	Requirements.
	Subpart 31.5—[Reserved]		
	Subpart 31.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments		Subpart 31.7—Contracts with Nonprofit Organizations
31.601	Purpose.	31.701	Purpose.
31.602	General.	31.702	General.
		31.703	Requirements.

31.000 Scope of part.

This part contains cost principles and procedures for—

(a) The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed (see 15.404-1(c)); and

(b) The determination, negotiation, or allowance of costs when required by a contract clause.

31.001 Definitions.

As used in this part—

“Accrued benefit cost method” means an actuarial cost method under which units of benefits are assigned to each cost accounting period and are valued as they accrue; *i.e.*, based on the services performed by each employee in the period involved. The measure of normal cost under this method for each cost accounting period is the present value of the units of benefit deemed to be credited to employees for service in that period. The measure of the actuarial accrued liability at a plan’s inception date is the present value of the units of benefit credited to employees for service prior to that date. (This method is also known as the unit credit cost method without salary projection.)

“Accumulating costs” means collecting cost data in an organized manner, such as through a system of accounts.

“Actual cash value” means the cost of replacing damaged property with other property of like kind and quality in the physical condition of the property immediately before the damage.

“Actual costs” means (except for Subpart 31.6) amounts determined on the basis of costs incurred, as distinguished from forecasted costs. Actual costs include standard costs properly adjusted for applicable variances.

“Actuarial accrued liability” means pension cost attributable, under the actuarial cost method in use, to years prior to the current period considered by a particular actuarial valuation. As of such date, the actuarial accrued liability represents the excess of the present value of future benefits and administrative expenses over the present value of future normal costs for all plan participants and beneficiaries. The excess of the actuarial accrued liability over the actuarial value of the assets of a pension plan is the unfunded actuarial liability. The excess of the actuarial value of the assets of a pension plan over the actuarial accrued liability is an actuarial surplus and is treated as a negative unfunded actuarial liability.

“Actuarial assumption” means an estimate of future conditions affecting pension cost; *e.g.*, mortality rate, employee turnover, compensation levels, earnings on pension plan assets, and changes in values of pension plan assets.

“Actuarial cost method” means a technique which uses actuarial assumptions to measure the present value of future pension benefits and pension plan administrative expenses, and that assigns the cost of such benefits and expenses to

cost accounting periods. The actuarial cost method includes the asset valuation method used to determine the actuarial value of the assets of a pension plan.

“Actuarial gain and loss” means the effect on pension cost resulting from differences between actuarial assumptions and actual experience.

“Actuarial valuation” means the determination, as of a specified date, of the normal cost, actuarial accrued liability, actuarial value of the assets of a pension plan, and other relevant values for the pension plan.

“Allocate” means to assign an item of cost, or a group of items of cost, to one or more cost objectives. This term includes both direct assignment of cost and the reassignment of a share from an indirect cost pool.

“Compensated personal absence” means any absence from work for reasons such as illness, vacation, holidays, jury duty, military training, or personal activities for which an employer pays compensation directly to an employee in accordance with a plan or custom of the employer.

“Cost input” means the cost, except general and administrative (G&A) expenses, which for contract costing purposes is allocable to the production of goods and services during a cost accounting period.

“Cost objective” means (except for Subpart 31.6) a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

“Cost of capital committed to facilities” means an imputed cost determined by applying a cost of money rate to facilities capital.

“Deferred compensation” means an award made by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

“Defined-benefit pension plan” means a pension plan in which the benefits to be paid, or the basis for determining such benefits, are established in advance and the contributions are intended to provide the stated benefits.

“Defined-contribution pension plan” means a pension plan in which the contributions to be made are established in advance and the benefits are determined thereby.

“Directly associated cost” means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

“Estimating costs” means the process of forecasting a future result in terms of cost, based upon information available at the time.

“Expressly unallowable cost” means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable.

“Facilities capital” means the net book value of tangible capital assets and of those intangible capital assets that are subject to amortization.

“Final cost objective” means (except for Subparts 31.3 and 31.6) a cost objective that has allocated to it both direct and indirect costs and, in the contractor’s accumulation system, is one of the final accumulation points.

“Fiscal year” means the accounting period for which annual financial statements are regularly prepared, generally a period of 12 months, 52 weeks, or 53 weeks.

“Funded pension cost” means the portion of pension cost for a current or prior cost accounting period that has been paid to a funding agency.

“Home office” means an office responsible for directing or managing two or more, but not necessarily all, segments of an organization. It typically establishes policy for, and provides guidance to, the segments in their operations. It usually performs management, supervisory, or administrative functions, and may also perform service functions in support of the operations of the various segments. An organization which has intermediate levels, such as groups, may have several home offices which report to a common home office. An intermediate organization may be both a segment and a home office.

“Immediate-gain actuarial cost method” means any of the several actuarial cost methods under which actuarial gains and losses are included as part of the unfunded actuarial liability of the pension plan, rather than as part of the normal cost of the plan.

“Independent research and development (IR&D) cost” means the cost of effort which is neither sponsored by a grant, nor required in performing a contract, and which falls within any of the following four areas—

- (a) Basic research,
- (b) Applied research,
- (c) Development, and
- (d) Systems and other concept formulation studies.

“Indirect cost pools” means (except for Subparts 31.3 and 31.6) groupings of incurred costs identified with two or more cost objectives but not identified specifically with any final cost objective.

“Insurance administration expenses” means the contractor’s costs of administering an insurance program; *e.g.*, the costs of operating an insurance or risk-management department, processing claims, actuarial fees, and service fees paid to insurance companies, trustees, or technical consultants.

“Intangible capital asset” means an asset that has no physical substance, has more than minimal value, and is expected to be held by an enterprise for continued use or possession

beyond the current accounting period for the benefits it yields.

“Job” means a homogeneous cluster of work tasks, the completion of which serves an enduring purpose for the organization. Taken as a whole, the collection of tasks, duties, and responsibilities constitutes the assignment for one or more individuals whose work is of the same nature and is performed at the same skill/responsibility level—as opposed to a position, which is a collection of tasks assigned to a specific individual. Within a job, there may be pay categories which are dependent on the degree of supervision required by the employee while performing assigned tasks which are performed by all persons with the same job.

“Job class of employees” means employees performing in positions within the same job.

“Labor cost at standard” means a preestablished measure of the labor element of cost, computed by multiplying labor-rate standard by labor-time standard.

“Labor market” means a place where individuals exchange their labor for compensation. Labor markets are identified and defined by a combination of the following factors—

- (1) Geography,
- (2) Education and/or technical background required,
- (3) Experience required by the job,
- (4) Licensing or certification requirements,
- (5) Occupational membership, and
- (6) Industry.

“Labor-rate standard” means a preestablished measure, expressed in monetary terms, of the price of labor.

“Labor-time standard” means a preestablished measure, expressed in temporal terms, of the quantity of labor.

“Material cost at standard” means a preestablished measure of the material elements of cost, computed by multiplying material-price standard by material-quantity standard.

“Material-price standard” means a preestablished measure, expressed in monetary terms, of the price of material.

“Material-quantity standard” means a preestablished measure, expressed in physical terms, of the quantity of material.

“Moving average cost” means an inventory costing method under which an average unit cost is computed after each acquisition by adding the cost of the newly acquired units to the cost of the units of inventory on hand and dividing this figure by the new total number of units.

“Nonqualified pension plan” means any pension plan other than a qualified pension plan as defined in this part.

“Normal cost” means the annual cost attributable, under the actuarial cost method in use, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

“Original complement of low cost equipment” means a group of items acquired for the initial outfitting of a tangible

capital asset or an operational unit, or a new addition to either. The items in the group individually cost less than the minimum amount established by the contractor for capitalization for the classes of assets acquired but in the aggregate they represent a material investment. The group, as a complement, is expected to be held for continued service beyond the current period. Initial outfitting of the unit is completed when the unit is ready and available for normal operations.

“Pay-as-you-go cost method” means a method of recognizing pension cost only when benefits are paid to retired employees or their beneficiaries.

“Pension plan” means a deferred compensation plan established and maintained by one or more employers to provide systematically for the payment of benefits to plan participants after their retirements, provided that the benefits are paid for life or are payable for life at the option of the employees. Additional benefits such as permanent and total disability and death payments, and survivorship payments to beneficiaries of deceased employees, may be an integral part of a pension plan.

“Pension plan participant” means any employee or former employee of an employer or any member or former member of an employee organization, who is or may become eligible to receive a benefit from a pension plan which covers employees of such employer or members of such organization who have satisfied the plan’s participation requirements, or whose beneficiaries are receiving or may be eligible to receive any such benefit. A participant whose employment status with the employer has not been terminated is an active participant of the employer’s pension plan.

“Profit center” means (except for Subparts 31.3 and 31.6) the smallest organizationally independent segment of a company charged by management with profit and loss responsibilities.

“Projected benefit cost method” means either—

(1) Any of the several actuarial cost methods that distribute the estimated total cost of all of the employees’ prospective benefits over a period of years, usually their working careers; or

(2) A modification of the accrued benefit cost method that considers projected compensation levels.

“Proposal” means any offer or other submission used as a basis for pricing a contract, contract modification, or termination settlement or for securing payments thereunder.

“Qualified pension plan” means a pension plan comprising a definite written program communicated to and for the exclusive benefit of employees that meets the criteria deemed essential by the Internal Revenue Service as set forth in the Internal Revenue Code for preferential tax treatment regarding contributions, investments, and distributions. Any other plan is a nonqualified pension plan.

“Self-insurance charge” means a cost which represents the projected average loss under a self-insurance plan.

“Service life” means the period of usefulness of a tangible capital asset (or group of assets) to its current owner. The period may be expressed in units of time or output. The estimated service life of a tangible capital asset (or group of assets) is a current forecast of its service life and is the period over which depreciation cost is to be assigned.

“Spread-gain actuarial cost method” means any of the several projected benefit actuarial cost methods under which actuarial gains and losses are included as part of the current and future normal costs of the pension plan.

“Standard cost” means any cost computed with the use of preestablished measures.

“Tangible capital asset” means an asset that has physical substance, more than minimal value, and is expected to be held by an enterprise for continued use or possession beyond the current accounting period for the services it yields.

“Termination of employment gain or loss” means an actuarial gain or loss resulting from the difference between the assumed and actual rates at which pension plan participants separate from employment for reasons other than retirement, disability, or death.

“Variance” means the difference between a preestablished measure and an actual measure.

“Weighted average cost” means an inventory costing method under which an average unit cost is computed periodically by dividing the sum of the cost of beginning inventory plus the cost of acquisitions by the total number of units included in these two categories.

31.002 Availability of accounting guide.

Contractors needing assistance in developing or improving their accounting systems and procedures may request a copy of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors. The pamphlet is available via the Internet at <http://www.dcaa.mil>.

Subpart 31.1—Applicability

31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and procedures in succeeding subparts of this part to various types of contracts and subcontracts. It also describes the need for advance agreements.

31.101 Objectives.

In recognition of differing organizational characteristics, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; *e.g.*, commercial concerns and educational institutions. The overall objective is to provide that, to the extent practicable, all

organizations of similar types doing similar work will follow the same cost principles and procedures. To achieve this uniformity, individual deviations concerning cost principles require advance approval of the Public Printer or designee.

31.102 Fixed-price contracts.

The applicable subparts of Part 31 shall be used in the pricing of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever (a) cost analysis is performed, or (b) a fixed-price contract clause requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts shall not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

31.103 Contracts with commercial organizations.

This category includes all contracts and contract modifications for supplies, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see 31.104), construction and architect-engineer contracts (see 31.105), State and local governments (see 31.107) and nonprofit organizations (see 31.108) on the basis of cost.

(a) The cost principles and procedures in Subpart 31.2 and agency supplements shall be used in pricing negotiated supply, service, experimental, developmental, and research contracts and contract modifications with commercial organizations whenever cost analysis is performed as required by 15.404-1(c).

(b) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 and agency supplements by reference in contracts with commercial organizations as the basis for—

(1) Determining reimbursable costs under—

(i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and

(ii) The cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see 16.601(b)(3));

(2) Negotiating indirect cost rates (see Subpart 42.7);

(3) Proposing, negotiating, or determining costs under terminated contracts (see 49.103 and 49.113);

(4) Price revision of fixed-price incentive contracts (see 16.204 and 16.403);

(5) Price redetermination of price redetermination contracts (see 16.205 and 16.206); and

(6) Pricing changes and other contract modifications.

31.104 Contracts with educational institutions.

This category includes all contracts and contract modifications for research and development, training, and other work performed by educational institutions.

(a) The contracting officer shall incorporate the cost principles and procedures in Subpart 31.3 by reference in cost-reimbursement contracts with educational institutions as the basis for—

(1) Determining reimbursable costs under the contracts and cost-reimbursement subcontracts thereunder performed by educational institutions;

(2) Negotiating indirect cost rates; and

(3) Settling costs of cost-reimbursement terminated contracts (see Subpart 49.3 and 49.109-7).

(b) The cost principles in this subpart are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

31.105 Construction and architect-engineer contracts.

(a) This category includes all contracts and contract modifications negotiated on the basis of cost with organizations other than educational institutions (see 31.104), State and local governments (see 31.107), and nonprofit organizations except those exempted under OMB Circular A-122 (see 31.108) for construction management or construction, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to construction projects. It does not include contracts for vessels, aircraft, or other kinds of personal property.

(b) Except as otherwise provided in (d) of this section, the cost principles and procedures in Subpart 31.2 shall be used in the pricing of contracts and contract modifications in this category if cost analysis is performed as required by 15.404-1(c).

(c) In addition, the contracting officer shall incorporate the cost principles and procedures in Subpart 31.2 (as modified by (d) of this section) by reference in contracts in this category as the basis for—

(1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

(2) Negotiating indirect cost rates;

(3) Proposing, negotiating, or determining costs under terminated contracts;

(4) Price revision of fixed-price incentive contracts; and

(5) Pricing changes and other contract modifications.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for construction and architect-engineer contracts shall be determined in accordance with Subpart 31.2.

(1) Because of widely varying factors such as the nature, size, duration, and location of the construction project, advance agreements as set forth in 31.109, for such items as home office overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in construction and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "Construction equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the contracting agency may specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of construction equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part shall not become allowable through the use of any schedule (see 31.109(c)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. Contracting officers should review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of construction equipment use rates (*e.g.*, the Construction Equipment Ownership and Operating Expense Schedule, published by the U.S. Army Corps of Engineers, industry sponsored construction equipment cost guides, or commercially published schedules of construction equipment use cost) provide average ownership and operating rates for construction equipment. The allowance for operating costs may include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration may be necessary.

(C) When a schedule of predetermined use rates for construction equipment is used to determine direct costs, all costs of equipment that are included in the cost allowances provided by the schedule shall be identified and eliminated from the contractor's other direct and indirect costs

charged to the contract. If the contractor's accounting system provides for site or home office overhead allocations, all costs which are included in the equipment allowances may need to be included in any cost input base before computing the contractor's overhead rate. In periods of suspension of work pursuant to a contract clause, the allowance for equipment ownership shall not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting construction equipment are allowable (but see paragraph (C) of this subsection).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for construction equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with 31.205-36(b)(3).

(3) Costs incurred at the job site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc., are allowable as direct or indirect costs, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

31.106 Facilities contracts.

31.106-1 Applicable cost principles.

The cost principles and procedures applicable to the evaluation and determination of costs under facilities contracts (as defined in 45.301), and subcontracts thereunder, will be governed by the type of entity to which a facilities contract is awarded. Except as otherwise provided in 31.106-2 of this section, Subpart 31.2 applies to facilities contracts awarded to commercial organizations; Subpart 31.3 applies to facilities contracts awarded to educational institutions; and 31.105 applies to facilities contracts awarded to construction contractors. Whichever cost principles are appropriate will be used in the pricing of facilities contracts and contract modifications if cost analysis is performed as required by 15.404-1(c). In addition, the contracting officer shall incorporate the cost principles and procedures appropriate in the circumstances (*e.g.*, Subpart 31.2; Subpart 31.3; or 31.105) by reference in facilities contracts as the basis for—

(a) Determining reimbursable costs under facilities contracts, including cost-reimbursement subcontracts thereunder;

(b) Negotiating indirect cost rates; and

(c) Determining costs of terminated contracts when the contractor elects to “voucher out” costs (see Subpart 49.3), and for settlement by determination (see 49.109-7).

31.106-2 Exceptions to general rules on allowability and allocability.

(a) A contractor’s established accounting system and procedures are normally directed to the equitable allocation of costs to the types of products which the contractor produces or services rendered in the course of normal operating activities. The acquisition of, or work on, facilities for the Government normally does not involve the manufacturing processes, plant departmental operations, cost patterns of work, administrative and managerial control, or clerical effort usual to production of the contractor’s normal products or services.

(b) Advance agreements (see 31.109) should be made between the contractor and the contracting officer as to indirect cost items to be applied to the facilities acquisition. A contractor’s normal accounting practice for allocating indirect costs to the acquisition of contractor facilities may range from charging all these costs to this acquisition to not charging any. When necessary to produce an equitable result, the contractor’s usual method of allocating indirect cost shall be varied, and appropriate adjustment shall be made to the pools of indirect cost and the bases of their distribution.

(c) The purchase of completed facilities (or services in connection with the facilities) from outside sources does not involve the contractor’s direct labor or indirect plant maintenance personnel. Accordingly, indirect manufacturing and plant overhead costs, which are primarily incurred or generated by reason of direct labor or maintenance labor operations, are not allocable to the acquisition of such facilities.

(d) Contracts providing for the installation of new facilities or the rehabilitation of existing facilities may involve the use of the contractor’s plant maintenance labor, as distinguished from direct labor engaged in the production of the company’s normal products. In such instances, only those types of indirect manufacturing and plant operating costs that are related to or incurred by reason of the expenditures of the classes of labor used for the performance of the facilities work may be allocated to the facilities contract. Thus, a facilities contract which involves the use of plant maintenance labor only would not be subject to an allocation of such cost items as direct productive labor supervision, depreciation, and maintenance expense applicable to productive machinery and equipment, or raw material and finished goods storage costs.

(e) Where a facilities contract calls for the construction, production, or rehabilitation of equipment or other items that are involved in the regular course of the contractor’s business by the use of the contractor’s direct labor and manufacturing processes, the indirect costs normally allocated to all that work may be allocated to the facilities contract.

31.106-3 Contractor’s commercial items.

If facilities constituting the contractor’s usual commercial items (or only minor modifications thereof) are acquired by the Government under the contract, the Government shall not pay any amount in excess of the contractor’s most favored customer price or the price of other suppliers for like quantities of the same or substantially the same items, whichever is lower.

31.107 Contracts with State, local, and federally recognized Indian tribal governments.

(a) Subpart 31.6 provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with—

(1) Publicly financed educational institutions subject to Subpart 31.3; or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

31.108 Contracts with nonprofit organizations.

Subpart 31.7 provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions, State and local governments, and those nonprofit organizations exempted under OMB Circular No. A-122.

31.109 Advance agreements.

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at Subparts 31.2,

31.3, 31.6, and 31.7, contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs. However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at Subparts 31.2, 31.3, 31.6, and 31.7 of that cost.

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.

(c) The contracting officer is not authorized by this 31.109 to agree to a treatment of costs inconsistent with this part. For example, an advance agreement may not provide that, notwithstanding 31.205-20, interest is allowable.

(d) Advance agreements may be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a contracting office, an agency, or several agencies.

(e) The cognizant administrative contracting officer (ACO), or other contracting officer established in Part 42, shall negotiate advance agreements except that an advance agreement affecting only one contract, or class of contracts from a single contracting office, shall be negotiated by a contracting officer in the contracting office, or an ACO when delegated by the contracting officer. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the contracting officer before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator shall—

(1) Determine if other contracting offices inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the responsible audit agency to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in 15.406-3, as applicable.

(h) Examples of costs for which advance agreements may be particularly important are—

(1) Compensation for personal services, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit pension plans;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and proposal costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Severance pay to employees on support service contracts;

(11) Plant reconversion;

(12) Professional services (*e.g.*, legal, accounting, and engineering);

(13) General and administrative costs (*e.g.*, corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in construction, job-site, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see 31.203(f));

(14) Costs of construction plant and equipment (see 31.105(d));

(15) Costs of public relations and advertising; and

(16) Training and education costs (see 31.205-44(h)).

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes. See 42.703-2 for administrative procedures regarding the certification provisions and the related contract clause prescription.

(b) If unallowable costs are included in final indirect cost settlement proposals, penalties may be assessed. See 42.709 for administrative procedures regarding the penalty assessment provisions and the related contract clause prescription.

Subpart 31.2—Contracts with Commercial Organizations

31.201 General.

31.201-1 Composition of total cost.

(a) The total cost of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits, plus any allocable cost of money pursuant to 31.205-10. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used, including standard costs properly adjusted for applicable variances. See 31.201-2(b) and (c) for Cost Accounting Standards (CAS) requirements.

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

31.201-2 Determining allowability.

(a) The factors to be considered in determining whether a cost is allowable include the following:

- (1) Reasonableness.
- (2) Allocability.
- (3) Standards promulgated by the CAS Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.
- (4) Terms of the contract.
- (5) Any limitations set forth in this subpart.

(b) Certain cost principles in this subpart incorporate the measurement, assignment, and allocability rules of selected CAS and limit the allowability of costs to the amounts determined using the criteria in those selected standards. Only those CAS or portions of standards specifically made applicable by the cost principles in this subpart are mandatory unless the contract is CAS-covered (see Part 30). Business units that are not otherwise subject to these standards under a CAS clause are subject to the selected standards only for the purpose of determining allowability of costs on Government contracts. Including the selected standards in the cost principles does not subject the business unit to any other CAS rules and regulations. The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves.

(c) When contractor accounting practices are inconsistent with this Subpart 31.2, costs resulting from such inconsistent practices shall not be allowed in excess of the amount that would have resulted from using practices consistent with this subpart.

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including sup-

porting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a claimed cost which is inadequately supported.

31.201-3 Determining reasonableness.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the inurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including—

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

31.201-4 Determining allocability.

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it—

- (a) Is incurred specifically for the contract;
- (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

31.201-5 Credits.

The applicable portion of any income, rebate, allowance, or other credit relating to any allowable cost and received by or accruing to the contractor shall be credited to the Government either as a cost reduction or by cash refund. See 31.205-6(j)(4) for rules governing refund or credit to the

Government associated with pension adjustments and asset reversions.

31.201-6 Accounting for unallowable costs.

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to a Government contract. A directly associated cost is any cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the other cost not been incurred. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) Costs which specifically become designated as unallowable or as unallowable directly associated costs of unallowable costs as a result of a written decision furnished by a contracting officer shall be identified if included in or used in computing any billing, claim, or proposal applicable to a Government contract. This identification requirement applies also to any costs incurred for the same purpose under like circumstances as the costs specifically identified as unallowable under either this paragraph or paragraph (a) of this subsection.

(c) The practices for accounting for and presentation of unallowable costs will be those as described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(d) If a directly associated cost is included in a cost pool which is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. Since the unallowable costs will attract their allocable share of costs from the cost pool, no further action is required to assure disallowance of the directly associated costs. In all other cases, the directly associated costs, if material in amount, must be purged from the cost pool as unallowable costs.

(e)(1) In determining the materiality of a directly associated cost, consideration should be given to the significance of—

- (i) The actual dollar amount,
- (ii) The cumulative effect of all directly associated costs in a cost pool, or
- (iii) The ultimate effect on the cost of Government contracts.

(2) Salary expenses of employees who participate in activities that generate unallowable costs shall be treated as directly associated costs to the extent of the time spent on the proscribed activity, provided the costs are material in accordance with paragraph (e)(1) of this subsection (except when such salary expenses are, themselves, unallowable). The time spent in proscribed activities should be compared to total time spent on company activities to determine if the costs are material. Time spent by employees outside the normal working hours should not be considered except when it

is evident that an employee engages so frequently in company activities during periods outside normal working hours as to indicate that such activities are a part of the employee's regular duties.

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, it is intended that such directly associated costs be unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this section, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

31.201-7 Construction and architect-engineer contracts.

Specific principles and procedures for evaluating and determining costs in connection with contracts and subcontracts for construction, and architect-engineer contracts related to construction projects, are in 31.105. The applicability of these principles and procedures is set forth in 31.000 and 31.100.

31.202 Direct costs.

(a) A direct cost is any cost that can be identified specifically with a particular final cost objective. No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, any direct cost of minor dollar amount may be treated as an indirect cost if the accounting treatment—

- (1) Is consistently applied to all final cost objectives; and
- (2) Produces substantially the same results as treating the cost as a direct cost.

31.203 Indirect costs.

(a) An indirect cost is any cost not directly identified with a single, final cost objective, but identified with two or more final cost objectives or an intermediate cost objective. It is not subject to treatment as a direct cost. After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to the several cost objectives. An indirect cost shall not be allocated to a final cost objective if other costs incurred for the same purpose in like circumstances have been included as a direct cost of that or any other final cost objective.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring such costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative (G&A) expenses are separately grouped. Similarly, the particular case may require subdivision of these groupings, *e.g.*, building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. This necessitates selecting a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(c) Once an appropriate base for distributing indirect costs has been accepted, it shall not be fragmented by removing individual elements. All items properly includable in an indirect cost base should bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the distribution of G&A costs, all items that would properly be part of the cost input base, whether allowable or unallowable, shall be included in the base and bear their pro rata share of G&A costs.

(d) The contractor's method of allocating indirect costs shall be in accordance with standards promulgated by the CAS Board, if applicable to the contract; otherwise, the method shall be in accordance with generally accepted accounting principles which are consistently applied. The method may require examination when—

(1) Substantial differences occur between the cost patterns of work under the contract and the contractor's other work;

(2) Significant changes occur in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(3) Indirect cost groupings developed for a contractor's primary location are applied to offsite locations. Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(e) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for distribution to work performed in that period. The criteria and guidance in 30.406 for selecting the

cost accounting periods to be used in allocating indirect costs are incorporated herein for application to contracts subject to full CAS coverage. For contracts subject to modified CAS coverage and for non-CAS-covered contracts, the base period for allocating indirect costs will normally be the contractor's fiscal year. But a shorter period may be appropriate (1) for contracts in which performance involves only a minor portion of the fiscal year, or (2) when it is general practice in the industry to use a shorter period. When a contract is performed over an extended period, as many base periods shall be used as are required to represent the period of contract performance.

(f) Special care should be exercised in applying the principles of paragraphs (b), (c), and (d) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division, or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent they are reasonable, allocable, and determined to be allowable under 31.201, 31.202, 31.203, and 31.205. These criteria apply to all of the selected items that follow, even if particular guidance is provided for certain items for emphasis or clarity.

(b) Costs incurred as reimbursements or payments to a subcontractor under a cost-reimbursement, fixed-price incentive, or price redeterminable type subcontract of any tier above the first firm-fixed-price subcontract or fixed-price subcontract with economic price adjustment provisions are allowable to the extent that allowance is consistent with the appropriate subpart of this Part 31 applicable to the subcontract involved. Costs incurred as payments under firm-fixed-price subcontracts or fixed-price subcontracts with economic price adjustment provisions or modifications thereto, when cost analysis was performed under 15.404-1(c), shall be allowable only to the extent that the price was negotiated in accordance with 31.102.

(c) Section 31.205 does not cover every element of cost. Failure to include any item of cost does not imply that it is either allowable or unallowable. The determination of allowability shall be based on the principles and standards in this subpart and the treatment of similar or related selected items. When more than one subsection in 31.205 is relevant to a contractor cost, the cost shall be apportioned among the applicable subsections, and the determination of allowability of each portion shall be based on the guidance contained in the applicable subsection. When a cost, to which more than one subsection in 31.205 is relevant, cannot be apportioned, the determination of allowability shall be based on the guidance contained in the subsection that most specifically deals

with, or best captures the essential nature of, the cost at issue.

31.205 Selected costs.

31.205-1 Public relations and advertising costs.

(a) "Public relations" means all functions and activities dedicated to—

(1) Maintaining, protecting, and enhancing the image of a concern or its products; or

(2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.

(b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.

(c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with 31.205-34.

(e) Allowable public relations costs include the following:

(1) Costs specifically required by contract.

(2) Costs of—

(i) Responding to inquiries on company policies and activities;

(ii) Communicating with the public, press, stockholders, creditors, and customers; and

(iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.

(3) Costs of participation in community service activities (*e.g.*, blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).

(4) Costs of plant tours and open houses (but see paragraph (f)(5) of this subsection).

(5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.

(f) Unallowable public relations and advertising costs include the following:

(1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.

(2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.

(3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.

(4) Costs of ceremonies such as—

(i) Corporate celebrations and

(ii) New product announcements.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

31.205-2 [Reserved]**31.205-3 Bad debts.**

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

31.205-4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

31.205-5 [Reserved]**31.205-6 Compensation for personal services.**

(a) *General.* Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance (except as otherwise provided for in other paragraphs of this subsection). It includes, but is not limited to, salaries; wages; directors' and executive committee members' fees; bonuses (including stock bonuses); incentive awards; employee stock options, and stock appreciation rights; employee stock ownership plans; employee insurance; fringe benefits; contributions to pension, other postretirement benefits, annuity, and employee incentive compensation plans; and allowances for off-site pay, incentive pay, location allowances, hardship pay, severance pay, and cost of living differential. Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see 31.205-6(g), (h), (j), (k), (m), and (o) of this subsection).

(2) The compensation in total must be reasonable for the work performed; however, specific restrictions on individual compensation elements must be observed where they are prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor—

(i) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation, and

(ii) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this Subpart 31.2 shall not be allowable under this subsection 31.205-6 solely on the basis that they constitute compensation for personal services.

(b) *Reasonableness.* The compensation for personal services paid or accrued to each employee must be reasonable for the work performed. Compensation will be considered reasonable if each of the allowable elements making up the employee's compensation package is reasonable. This paragraph addresses the reasonableness of compensation, except when the compensation is set by provisions of a labor-management agreement under terms of the Federal Labor Relations Act or similar state statutes. The tests for reasonableness of labor-management agreements are set forth in paragraph (c) of this subsection. In addition to the provisions of 31.201-3, in testing the reasonableness of individual elements for particular employees or job classes of employees, consideration should be given to factors determined to be relevant by the contracting officer.

(1) Among others, factors which may be relevant include general conformity with the compensation practices of other firms of the same size, the compensation practices of other firms in the same industry, the compensation practices of firms in the same geographic area, the compensation practices of firms engaged in predominantly non-Government work, and the cost of comparable services obtainable from outside sources. The appropriate factors for evaluating the reasonableness of compensation depend on the degree to which those factors are representative of the labor market for the job being evaluated. The relative significance of factors will vary according to circumstances. In administering this principle, it is recognized that not every compensation case need be subjected in detail to the tests described in this cost principle. The tests need be applied only when a general review reveals amounts or types of compensation that appear unreasonable or unjustified. Based on an initial review of the facts, contracting officers or their representatives may challenge the reasonableness of any individual element or the sum of the individual elements of compensation paid or

accrued to particular employees or job classes of employees. In such cases, there is no presumption of reasonableness and, upon challenge, the contractor must demonstrate the reasonableness of the compensation item in question. In doing so, the contractor may introduce, and the contracting officer will consider, not only any circumstances surrounding the compensation item challenged, but also the magnitude of other compensation elements which may be lower than would be considered reasonable in themselves. However, the contractor's right to introduce offsetting compensation elements into consideration is subject to the following limitations:

(i) Offsets will be considered only between the allowable elements of an employee's (or a job class of employees') compensation package or between the compensation packages of employees in jobs within the same job grade or level.

(ii) Offsets will be considered only between the allowable portion of the following compensation elements of employees or job classes of employees:

- (A) Wages and salaries.
- (B) Incentive bonuses.
- (C) Deferred compensation.
- (D) Pension and savings plan benefits.
- (E) Health insurance benefits.
- (F) Life insurance benefits.
- (G) Compensated personal absence benefits.

However, any of the above elements or portions thereof, whose amount is not measurable, shall not be introduced or considered as an offset item.

(iii) In considering offsets, the magnitude of the compensation elements in question must be taken into account. In determining the magnitude of compensation elements, the timing of receipt by the employee must be considered.

(2) Compensation costs under certain conditions give rise to the need for special consideration. Among such conditions are the following:

(i) Compensation to (A) owners of closely held corporations, partners, sole proprietors, or members of their immediate families, or (B) persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that salaries are reasonable for the personal services rendered rather than being a distribution of profits. Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits. For closely held corporations, compensation costs covered by this subdivision shall not be recognized in amounts exceeding those costs that are deductible as compensation under the Internal Revenue Code and regulations under it.

(ii) Any change in a contractor's compensation policy that results in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy. Contracting officers or their representatives should normally challenge increased costs where major revisions of existing compensation plans or new plans are introduced by the contractor, and the contractor—

(A) Has not notified the cognizant ACO of the changes either before their implementation or within a reasonable period after their implementation; and

(B) Has not provided the Government, either before implementation or within a reasonable period after it, an opportunity to review the reasonableness of the changes.

(iii) The contractor's business is such that its compensation levels are not subject to the restraints that normally occur in the conduct of competitive business.

(iv) The contractor incurs costs for compensation in excess of the amounts which are deductible under the Internal Revenue Code and regulations issued under it.

(c) *Labor-management agreements.* If costs of compensation established under "arm's length" negotiated labor-management agreements are otherwise allowable, the costs are reasonable if, as applied to work in performing Government contracts, they are not determined to be unwarranted by the character and circumstances of the work or discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this paragraph (c) unless—

(1) The contractor has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether unusual conditions pertain to Government contract work, imposing burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of cash, corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation), or other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities shall be the fair market value on the measurement date (*i.e.*, the first date the number of shares awarded is known) determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees shall be subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Domestic and foreign differential pay.* (1) When personal services are performed in a foreign country, compensation may also include a differential that may properly consider all expenses associated with foreign employment such as housing, cost of living adjustments, transportation, bonuses, additional Federal, State, local or foreign income taxes resulting from foreign assignment, and other related expenses.

(2) Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under 31.205-35(a)(10).)

(f) *Bonuses and incentive compensation.* (1) Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance are allowable provided the awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment and the basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraph (f)(1) of this subsection and of paragraph (k) of this subsection.

(g) *Severance pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(7).

(2) Severance pay to be allowable must meet the general allowability criteria in subdivision (g)(2)(i) of this subsection, and, depending upon whether the severance is normal or abnormal, criteria in subdivision (g)(2)(ii) for normal severance pay or subdivision (g)(2)(iii) for abnormal severance pay also apply. In addition, paragraph (g)(3) of this subsection applies if the severance cost is for foreign nationals employed outside the United States.

(i) Severance pay is allowable only to the extent that, in each case, it is required by (A) law; (B) employer-employee agreement; (C) established policy that constitutes, in effect, an implied agreement on the contractor's part; or (D) circumstances of the particular employment. Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(ii) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant, or where the contractor provides for accrual of pay for normal severances, that method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period and if amounts accrued are allocated to all work performed in the contractor's plant.

(iii) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(3) Notwithstanding the reference to geographical area in 31.205-6(b)(1), under 10 U.S.C. 2324(e)(1)(M) and 41 U.S.C. 256(e)(1)(M), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under 10 U.S.C. 2324(e)(1)(N) and 41 U.S.C. 256(e)(1)(N), all such costs of severance payments which are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. 10 U.S.C. 2324(e)(3) and 41 U.S.C.

256(e)(2) permit the head of the agency, or designee, to waive these cost allowability limitations under certain circumstances (see 37.113 and the solicitation provision at 52.237-8).

(h) *Backpay.* (1) *Backpay resulting from violations of Federal labor laws or the Civil Rights Act of 1964.* Backpay may result from a negotiated settlement, order, or court decree that resolves a violation of Federal labor laws or the Civil Rights Act of 1964. Such backpay falls into two categories: one requiring the contractor to pay employees additional compensation for work performed for which they were underpaid, and the other resulting from other violations, such as when the employee was improperly discharged, discriminated against, or other circumstances for which the backpay was not additional compensation for work performed. Backpay resulting from underpaid work is compensation for the work performed and is allowable. All other backpay resulting from violation of Federal labor laws or the Civil Rights Act of 1964 is unallowable.

(2) *Other backpay.* Backpay may also result from payments to employees (union and nonunion) for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiations. Such backpay is allowable. Backpay to nonunion employees based upon results of union agreement negotiations is allowable only if—

(i) A formal agreement or understanding exists between management and the employees concerning these payments, or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payment.

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.

(j) *Pension costs.* (1) A pension plan, as defined in 31.001, is a deferred compensation plan. Additional benefits such as permanent and total disability and death payments and survivorship payments to beneficiaries of deceased employees may be treated as pension costs, provided the benefits are an integral part of the pension plan and meet all the criteria pertaining to pension costs.

(2) Pension plans are normally segregated into two types of plans: defined-benefit or defined-contribution pension plans. The cost of all defined-benefit pension plans shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.412, Cost accounting standard for composition and measurement of pension cost, and 48 CFR 9904.413, Adjustment and allocation of pension cost. The costs of all defined-contribution pension plans shall be measured, allocated, and accounted for in accordance with the provisions of 48 CFR 9904.412 and 48 CFR 9904.413. Pension costs are allowable subject to the referenced standards and the cost limitations and exclusions set forth in paragraph (j)(2)(i) and in paragraphs (j)(3) through (8) of this subsection.

(i) Except for nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be funded by the time set for filing of the Federal income tax return or any extension thereof. Pension costs assigned to the current year, but not funded by the tax return time, shall not be allowable in any subsequent year. For nonqualified pension plans using the pay-as-you-go cost method, to be allowable in the current year, pension costs must be allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Pension payments must be reasonable in amount and must be paid pursuant to an agreement entered into in good faith between the contractor and employees before the work or services are performed; and the terms and conditions of the established plan. The cost of changes in pension plans that are discriminatory to the Government or are not intended to be applied consistently for all employees under similar circumstances in the future are not allowable.

(iii) Except as provided for early retirement benefits in paragraph (j)(7) of this subsection, one-time-only pension supplements not available to all participants of the basic plan are not allowable as pension costs unless the supplemental benefits represent a separate pension plan and the benefits are payable for life at the option of the employee.

(iv) Increases in payments to previously retired plan participants covering cost-of-living adjustments are allowable if paid in accordance with a policy or practice consistently followed.

(3) *Defined-benefit pension plans.* This paragraph covers pension plans in which the benefits to be paid or the basis for determining such benefits are established in advance and the contributions are intended to provide the stated benefits. The cost limitations and exclusions pertaining to defined-benefit plans are as follows:

(i) (A) Except for nonqualified pension plans, pension costs (see 48 CFR 9904.412-40(a)(1)) assigned to the current accounting period, but not funded during it, shall not be allowable in subsequent years (except that a payment made to a fund by the time set for filing the Federal income

tax return or any extension thereof is considered to have been made during such taxable year). However, any portion of pension cost computed for a cost accounting period, that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of the Employee's Retirement Income Security Act of 1974 (ERISA), will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(B) For nonqualified pension plans, except those using the pay-as-you-go cost method, allowable costs are limited to the amount allocable in accordance with 48 CFR 9904.412-50(d)(2).

(C) For nonqualified pension plans using the pay-as-you-go cost method, allowable costs are limited to the amounts allocable in accordance with 48 CFR 9904.412-50(d)(3).

(ii) Any amount funded in excess of the pension cost assigned to a cost accounting period is not allowable and shall be accounted for as set forth at 48 CFR 9904.412-50(a)(4), and shall be allowable in the future period to which it is assigned, to the extent it is allocable, reasonable, and not otherwise unallowable.

(iii) Increased pension costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable. If a composite rate is used for allocating pension costs between the segments of a company and if, because of differences in the timing of the funding by the segments, an inequity exists, allowable pension costs for each segment will be limited to that particular segment's calculation of pension costs as provided for in 48 CFR 9904.413-50(c). Determinations of unallowable costs shall be made in accordance with the actuarial cost method used in calculating pension costs.

(iv) Allowability of the cost of indemnifying the Pension Benefit Guaranty Corporation (PBGC) under ERISA Section 4062 or 4064 arising from terminating an employee deferred compensation plan will be considered on a case-by-case basis, provided that if insurance was required by the PBGC under ERISA Section 4023, it was so obtained and the indemnification payment is not recoverable under the insurance. Consideration under the foregoing circumstances will be primarily for the purpose of appraising the extent to which the indemnification payment is allocable to Government work. If a beneficial or other equitable relationship exists, the Government will participate, despite the requirements of 31.205-19(a)(3) and (b), in the indemnification payment to the extent of its fair share.

(v) Increased pension costs resulting from the withdrawal of assets from a pension fund and transfer to another employee benefit plan fund, or transfer of assets to another account within the same fund, are unallowable except to the extent authorized by an advance agreement. If the with-

drawal of assets from a pension fund is a plan termination under ERISA, the provisions of paragraph (j)(4) of this subsection apply. The advance agreement shall—

(A) State the amount of the Government's equitable share in the gross amount withdrawn or transferred; and

(B) Provide that the Government receive a credit equal to the amount of the Government's equitable share of the gross withdrawal or transfer.

(4) *Pension adjustments and asset reversions.* (i) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Subpart 31.2 or for which cost or pricing data were submitted.

(ii) For all other situations where assets revert to the contractor, or such assets are constructively received by it for any reason, the contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to Subpart 31.2. Excise taxes on pension plan asset reversions or withdrawals under this paragraph (j)(4)(ii) are unallowable in accordance with 31.205-41(b)(6).

(5) *Defined-contribution pension plans.* This paragraph covers those pension plans in which the contributions are established in advance and the level of benefits is determined by the contributions made. It also covers profit sharing, savings plans, and other such plans, provided the plans fall within the definition of a pension plan in paragraph (j)(1) of this subsection.

(i) Allowable pension cost is limited to the net contribution required to be made for a cost accounting period after taking into account dividends and other credits, where applicable. However, any portion of pension cost computed for a cost accounting period that exceeds the amount required to be funded pursuant to a waiver granted under the provisions of ERISA will be allowable in those future accounting periods in which the funding of such excess amounts occurs (see 48 CFR 9904.412-50(c)(5)).

(ii) The provisions of paragraphs (j)(3)(ii) and (iv) of this subsection apply to defined-contribution plans.

(6) *Pension plans using the pay-as-you-go cost method.* The cost of pension plans using the pay-as-you-go cost method shall be measured, allocated, and accounted for in accordance with 48 CFR 9904.412 and 9904.413. Pension costs for a pension plan using the pay-as-you-go cost method shall be allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

(7) *Early retirement incentive plans.* An early retirement incentive plan is a plan under which employees receive a bonus or incentive, over and above the requirement of the basic pension plan, to retire early. These plans normally are not applicable to all participants of the basic plan and do not represent life income settlements, and as such would not qualify as pension costs. However, for contract costing purposes, early retirement incentive payments are allowable subject to the pension cost criteria contained in subdivisions (j)(3)(i) through (iv) provided—

(i) The costs are accounted for and allocated in accordance with the contractor's system of accounting for pension costs;

(ii) The payments are made in accordance with the terms and conditions of the contractor's plan;

(iii) The plan is applied only to active employees. The cost of extending the plan to employees who retired or were terminated before the adoption of the plan is unallowable; and

(iv) The total of the incentive payments to any employee may not exceed the amount of the employee's annual salary for the previous fiscal year before the employee's retirement.

(8) *Employee stock ownership plans (ESOP).* (i) An ESOP is an individual stock bonus plan designed specifically to invest in the stock of the employer corporation. The contractor's contributions to an Employee Stock Ownership Trust (ESOT) may be in the form of cash, stock, or property. Costs of ESOP's are allowable subject to the following conditions:

(A) Contributions by the contractor in any one year may not exceed 15 percent (25 percent when a money purchase plan is included) of salaries and wages of employees participating in the plan in any particular year.

(B) The contribution rate (ratio of contribution to salaries and wages of participating employees) may not exceed the last approved contribution rate except when approved by the contracting officer based upon justification provided by the contractor. When no contribution was made in the previous year for an existing ESOP, or when a new ESOP is first established, and the contractor proposes to make a contribution in the current year, the contribution rate shall be subject to the contracting officer's approval.

(C) When a plan or agreement exists wherein the liability for the contribution can be compelled for a specific

year, the expense associated with that liability is assignable only to that period. Any portion of the contribution not funded by the time set for filing of the Federal income tax return for that year or any extension thereof shall not be allowable in subsequent years.

(D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.

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

(ii) Amounts contributed to an ESOP arising from either—

(A) An additional investment tax credit (see 1975 Tax Reduction Act—TRASOP's); or

(B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.

(iii) The requirements of subdivision (j)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.

(k) *Deferred compensation other than pensions.* (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to

31.205-6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.

(2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provisions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.

(l) *Compensation incidental to business acquisitions.* The following costs are unallowable: (1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.

(2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.

(m) *Fringe benefits.* (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement benefits other than pensions (PRB).*

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits

encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition, to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this section.

(i) *Cash basis.* Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.

(iii) *Accrual basis.* Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.

(6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to Subpart 31.2.

(p) *Limitation on allowability of compensation for certain contractor personnel.* (1) Costs incurred after January 1, 1998, for compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under Section 39 of the OFPP Act (41 U.S.C. 435) are unallowable. This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under new or previously existing contracts. This limitation applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

(2) As used in this paragraph:

(i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(5) and (j)(8) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) "Senior executive" means—

(A) Prior to January 2, 1999—

(1) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(2) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(3) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such intermediate home office or segment.

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

(iii) "Fiscal year" means the fiscal year established by the contractor for accounting purposes.

(iv) "Contractor's headquarters" means the highest organizational level from which executive compensation costs are allocated to Government contracts.

31.205-7 Contingencies.

(a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.

(2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, 31.205-6(g), 31.205-19, and 31.205-24.)

31.205-8 Contributions or donations.

Contributions or donations, including cash, property and services, regardless of recipient, are unallowable, except as provided in 31.205-1(e)(3).

31.205-9 [Reserved]

31.205-10 Cost of money.

(a) *Facilities capital cost of money—(1) General.*

(i) Facilities capital cost of money (cost of capital committed to facilities) is an imputed cost determined by applying a cost-of-money rate to facilities capital employed in contract performance. A cost-of-money rate is uniformly imputed to all contractors (see subdivision (a)(1)(ii) of this subsection). Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowings (see 31.205-20).

(ii) 48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, establishes criteria for measuring and allocating, as an element of contract cost, the cost of capital committed to facilities. Cost-of-money factors

are developed on Form CASB-CMF, broken down by overhead pool at the business unit, using—

(A) Business-unit facilities capital data,

(B) Overhead allocation base data, and

(C) The cost-of-money rate, which is based on interest rates specified by the Secretary of the Treasury under Public Law 92-41.

(2) *Allowability.* Whether or not the contract is otherwise subject to CAS, facilities capital cost of money is allowable if—

(i) The contractor's capital investment is measured, allocated to contracts, and costed in accordance with 48 CFR 9904.414;

(ii) The contractor maintains adequate records to demonstrate compliance with this standard;

(iii) The estimated facilities capital cost of money is specifically identified or proposed in cost proposals relating to the contract under which this cost is to be claimed; and

(iv) The requirements of 31.205-52, which limit the allowability of facilities capital cost of money, are observed.

(3) *Accounting.* The facilities capital cost of money need not be entered on the contractor's books of account. However, the contractor shall—

(i) Make a memorandum entry of the cost, and

(ii) Maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.

(4) *Payment.* Facilities capital cost of money that is—

(i) Allowable under paragraph (2) of this subsection; and

(ii) Calculated, allocated, and documented in accordance with this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

(5) The requirements of 31.205-52 shall be observed in determining the allowable cost of money attributable to including asset valuations resulting from business combinations in the facilities capital employed base.

(b) *Cost of money as an element of the cost of capital assets under construction—(1) General.* (i) Cost of money as an element of the cost of capital assets under construction is an imputed cost determined by applying a cost-of-money rate to the investment in tangible and intangible capital assets while they are being constructed, fabricated, or developed for a contractor's own use. Capital employed is determined without regard to whether its source is equity or borrowed capital. The resulting cost of money is not a form of interest on borrowing (see 31.205-20).

(ii) 48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction, establishes criteria for measuring and allocating, as an ele-

ment of contract cost, the cost of capital committed to capital assets under construction, fabrication, or development.

(2) *Allowability.* (i) Whether or not the contract is otherwise subject to CAS, and except as specified in subdivision (ii) of this section, the cost of money for capital assets under construction, fabrication, or development is allowable if—

(A) The cost of money is calculated, allocated to contracts, and costed in accordance with 48 CFR 9904.417;

(B) The contractor maintains adequate records to demonstrate compliance with this standard;

(C) The cost of money for tangible capital assets is included in the capitalized cost that provides the basis for allowable depreciation costs, or, in the case of intangible capital assets, the cost of money is included in the cost of those assets for which amortization costs are allowable; and

(D) The requirements of 31.205-52, which limit the allowability of cost of money for capital assets under construction, fabrication, or development, are observed.

(ii) Actual interest cost in lieu of the calculated imputed cost of money for capital assets under construction, fabrication, or development is unallowable.

(3) *Accounting.* The cost of money for capital assets under construction need not be entered on the contractor's books of account. However, the contractor shall (i) make a memorandum entry of the cost and (ii) maintain, in a manner that permits audit and verification, all relevant schedules, cost data, and other data necessary to support the entry fully.

(4) *Payment.* The cost of money for capital assets under construction that is allowable under paragraph (2) of this subsection of this cost principle shall be an "incurred cost" for reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts.

31.205-11 Depreciation.

(a) Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, must adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and its requirements supersede any conflicting requirements of this cost principle. Once electing to adopt 48 CFR 9904.409 for all contracts,

contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts. Paragraphs (c) through (e) of this subsection apply to contracts to which 48 CFR 9904.409 is not applied.

(c) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, if the contractor is able to demonstrate that it is reasonable and allocable (but see paragraph (i) of this section).

(d) Depreciation shall be considered reasonable if the contractor follows policies and procedures that are—

(1) Consistent with those followed in the same cost center for business other than Government;

(2) Reflected in the contractor's books of accounts and financial statements; and

(3) Both used and acceptable for Federal income tax purposes.

(e) When the depreciation reflected on a contractor's books of accounts and financial statements differs from that used and acceptable for Federal income tax purposes, reimbursement shall be based on the asset cost amortized over the estimated useful life of the property using depreciation methods (straight line, sum of the years' digits, etc.) acceptable for income tax purposes. Allowable depreciation shall not exceed the amounts used for book and statement purposes and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same cost center on non-Government business (but see paragraph (o) of this subsection).

(f) Depreciation for reimbursement purposes in the case of tax-exempt organizations shall be determined on the basis described in paragraph (e) of this section.

(g) Special considerations are required for assets acquired before the effective date of this cost principle if, on that date, the undepreciated balance of these assets resulting from depreciation policies and procedures used previously for Government contracts and subcontracts is different from the undepreciated balance on the books and financial statements. The undepreciated balance for contract cost purposes shall be depreciated over the remaining life using the methods and lives followed for book purposes. The aggregate depreciation of any asset allowable after the effective date of this 31.205-11 shall not exceed the cost basis of the asset less any depreciation allowed or allowable under prior acquisition regulations.

(h) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives in paragraph (a) of this subsection, vary with volume of production or use of multishift operations.

(i) In the case of emergency facilities covered by certificates of necessity, a contractor may elect to use normal

depreciation without requesting a determination of "true depreciation," or may elect to use either normal or "true depreciation" after a determination of "true depreciation" has been made by an Emergency Facilities Depreciation Board (EFDB). The method elected must be followed consistently throughout the life of the emergency facility. When an election is made to use normal depreciation, the criteria in paragraphs (c), (d), (e), and (f) of this section shall apply for both the emergency period and the post-emergency period. When an election is made to use "true depreciation", the amount allowable as depreciation—

(1) With respect to the emergency period (five years), shall be computed in accordance with the determination of the EFDB and allocated rateably over the full five year emergency period; *provided* no other allowance is made which would duplicate the factors, such as extraordinary obsolescence, covered by the Board's determination; and

(2) After the end of the emergency period, shall be computed by distributing the remaining undepreciated portion of the cost of the emergency facility over the balance of its useful life provided the remaining undepreciated portion of such cost shall not include any amount of unrecovered "true depreciation."

(j) No depreciation, rental, or use charge shall be allowed on property acquired at no cost from the Government by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(k) The depreciation on any item which meets the criteria for allowance at a "price" under 31.205-26(e) may be based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(l) No depreciation or rental shall be allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(m) 48 CFR 9904.404, Capitalization of Tangible Assets, applies to assets acquired by a "capital lease" as defined in Statement of Financial Accounting Standard No. 13 (FAS-13), Accounting for Leases, issued by the Financial Accounting Standards Board (FASB). Compliance with 48 CFR 9904.404 and FAS-13 requires that such leased assets (capital leases) be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the leased life as amortization charges as appropriate.

Assets whose leases are classified as capital leases under FAS-13 are subject to the requirements of 31.205-11 while assets acquired under leases classified as operating leases are subject to the requirements on rental costs in 31.205-36. The standards of financial accounting and reporting prescribed by FAS-13 are incorporated into this principle and shall govern its application, except as provided in paragraphs (1), (2), and (3) of this paragraph.

(1) Rental costs under a sale and leaseback arrangement shall be allowable up to the amount that would have been allowed had the contractor retained title to the property.

(2) Capital leases, as defined in FAS-13, for all real and personal property, between any related parties are subject to the requirements of this paragraph 31.205-11(m). If it is determined that the terms of the lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges shall not be allowed in excess of those which would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

(3) Assets acquired under leases that the contractor must capitalize under FAS-13 shall not be treated as purchased assets for contract purposes if the leases are covered by 31.205-36(b)(4).

(n) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205-52, which limit the allowability of depreciation, shall be observed.

(o) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets shall be limited to the amounts that would have been allowed had the assets not been written down (see 31.205-16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

31.205-12 Economic planning costs.

(a) This category includes costs of generalized long-range management planning that is concerned with the future overall development of the contractor's business and that may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business. Economic planning costs do not include organization or reorganization costs covered by 31.205-27.

(b) Economic planning costs are allowable as indirect costs to be properly allocated.

(c) Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this principle.

31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.

(a) Aggregate costs incurred on activities designed to improve working conditions, employer-employee relations, employee morale, and employee performance (less income generated by these activities) are allowable, except as limited by paragraphs (b), (c), and (d) of this subsection. Some examples of allowable activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (*e.g.*, where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or similar sources, may be included as costs incurred under

paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

31.205-14 Entertainment costs.

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

31.205-15 Fines, penalties, and mischarging costs.

(a) Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, local, or foreign laws and regulations, are unallowable except when incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer.

(b) Costs incurred in connection with, or related to, the mischarging of costs on Government contracts are unallowable when the costs are caused by, or result from, alteration or destruction of records, or other false or improper charging or recording of costs. Such costs include those incurred to measure or otherwise determine the magnitude of the improper charging, and costs incurred to remedy or correct the mischarging, such as costs to rescreen and reconstruct records.

31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.

(a) Gains and losses from the sale, retirement, or other disposition (but see 31.205-19) of depreciable property shall be included in the year in which they occur as credits or charges to the cost grouping(s) in which the depreciation or amortization applicable to those assets was included (but see paragraph (d) of this subsection). However, no gain or loss shall be recognized as a result of the transfer of assets in a business combination (see 31.205-52).

(b) Gains and losses on disposition of tangible capital assets, including those acquired under capital leases (see 31.205-11(m)), shall be considered as adjustments of depreciation costs previously recognized. The gain or loss for each asset disposed of is the difference between the net amount realized, including insurance proceeds from involuntary conversions, and its undepreciated balance. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost (or for assets acquired under a capital lease, the value at which the leased asset is

capitalized) of the asset and its undepreciated balance (except see subdivisions (c)(2)(i) or (ii) of this section).

(c) Special considerations apply to an involuntary conversion which occurs when a contractor's property is destroyed by events over which the owner has no control, such as fire, windstorm, flood, accident, theft, etc., and an insurance award is recovered. The following govern involuntary conversions:

(1) When there is a cash award and the converted asset is not replaced, gain or loss shall be recognized in the period of disposition. The gain recognized for contract costing purposes shall be limited to the difference between the acquisition cost of the asset and its undepreciated balance.

(2) When the converted asset is replaced, the contractor shall either—

(i) Adjust the depreciable basis of the new asset by the amount of the total realized gain or loss; or

(ii) Recognize the gain or loss in the period of disposition, in which case the Government shall participate to the same extent as outlined in paragraph (c)(1) of this subsection.

(d) Gains and losses on the disposition of depreciable property shall not be recognized as a separate charge or credit when—

(1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 31.205-11; or

(2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.

(f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.

(g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

31.205-17 Idle facilities and idle capacity costs.

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

“Costs of idle facilities or idle capacity” means costs such as maintenance, repair, housing, rent, and other related costs; e.g., property taxes, insurance, and depreciation.

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

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

“Idle facilities” means completely unused facilities that are excess to the contractor’s current needs.

(b) The costs of idle facilities are unallowable unless the facilities—

(1) Are necessary to meet fluctuations in workload;
or

(2) Were necessary when acquired and are now idle because of changes in requirements, production economies, reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 31.205-42)).

(c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

(d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

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

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

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

definition of the term “development,” defined in this subsection.

“Basic research” (see 2.101).

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

“Company” means all divisions, subsidiaries, and affiliates of the contractor under common control.

“Development” means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the purpose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes—

(1) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

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

“Systems and other concept formulation studies” means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

(b) *Composition and allocation of costs.* The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows—

(1) *Fully-CAS-covered contracts.* Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.

(2) *Modified CAS-covered and non-CAS-covered contracts.* Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered

or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:

(i) IR&D and B&P costs shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the G&A of the other profit centers or through the corporate G&A, as appropriate.

(ii) If allocations of IR&D or B&P through the G&A base do not provide equitable cost allocation, the contracting officer may approve use of a different base.

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

(d) *Deferred IR&D costs.* (1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that—

(i) The total amount of IR&D costs applicable to the product can be identified;

(ii) The proration of such costs to sales of the product is reasonable;

(iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and

(iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.

(2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.

(e) *Cooperative arrangements.* (1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrange-

ments). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under—

(i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));

(ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));

(iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or

(iv) Other equivalent authority.

(2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be considered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

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

31.205-19 Insurance and indemnification.

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

(1) Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.

(2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:

(i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.

(ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.

(iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured

property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.

(iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.

(v) Contractors operating under a program of self-insurance must obtain approval of the program when required by 28.308(a).

(vi) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).

(3) Actual losses are unallowable unless expressly provided for in the contract, except—

(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the contractor did not establish a self-insurance program. Such contracts are not subject to the self-insurance requirements of 48 CFR 9904.416. For contracts subject to 48 CFR 9904.416, and for those made subject to the self-insurance requirements of that Standard as a result of the contractor's having established a self-insurance program (see paragraph (a) of this section), actual losses may be used as a basis for charges under a self-insurance program when the actual amount of losses will not differ significantly from the projected average losses for the accounting period (see 48 CFR 9904.416.50(a)(2)(ii)). In those instances where an actual loss has occurred and the present value of the liability is determined under the provisions of 48 CFR 9904.416-50(a)(3)(ii), the allowable cost shall be limited to an amount computed using as a discount rate the interest rate determined by the Secretary of the Treasury pursuant to 50 U.S.C. App. 1215(b)(2) in effect at the time the loss is recognized. However, the full amount of a lump-sum settlement to be paid within a year of the date of settlement is allowable.

(ii) Minor losses, such as spoilage, breakage, and disappearance of small hand tools that occur in the ordinary course of doing business and that are not covered by insurance are allowable.

(4) The cost of insurance to protect the contractor against the costs of correcting its own defects in materials or workmanship is unallowable. However, insurance costs to cover fortuitous or casualty losses resulting from defects in materials or workmanship are allowable as a normal business expense.

(5) Premiums for retroactive or backdated insurance written to cover occurred and known losses are unallowable.

(b) If purchased insurance is available, the charge for any self-insurance coverage plus insurance administration expenses shall not exceed the cost of comparable purchased insurance plus associated insurance administration expenses.

(c) Insurance provided by captive insurers (insurers owned by or under the control of the contractor) is considered self-insurance, and charges for it must comply with the self-insurance provisions of 48 CFR 9904.416. However, if the captive insurer also sells insurance to the general public in substantial quantities and it can be demonstrated that the charge to the contractor is based on competitive market forces, the insurance will be considered purchased insurance.

(d) The allowability of premiums for insurance purchased from fronting insurance companies (insurance companies not related to the contractor but who reinsure with a captive insurer of the contractor) shall not exceed the amount (plus reasonable fronting company charges for services rendered) which the contractor would have been allowed had it insured directly with the captive insurer.

(e) Self-insurance charges for risks of catastrophic losses are not allowable (see 28.308(e)).

(f) The Government is obligated to indemnify the contractor only to the extent authorized by law, as expressly provided for in the contract, except as provided in paragraph (a)(3) of this section.

(g) Late premium payment charges related to employee deferred compensation plan insurance incurred pursuant to Section 4007 (29 U.S.C. 1307) or Section 4023 (29 U.S.C. 1323) of the Employee Retirement Income Security Act of 1974 are unallowable.

31.205-20 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, and costs of preparing and issuing stock rights are unallowable (but see 31.205-28). However, interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3) is allowable.

31.205-21 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and its employees, including costs of

shop stewards, labor management committees, employee publications, and other related activities, are allowable.

31.205-22 Lobbying and political activity costs.

(a) Costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activities;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence—

(i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity), or with any government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence—

(i) The introduction of Federal, state, or local legislation, or

(ii) The enactment or modification of any pending Federal, state, or local legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign;

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable activities; or

(6) Costs incurred in attempting to improperly influence (see 3.401), either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter.

(b) The following activities are excepted from the coverage of (a) of this section:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a contract through hearing testimony, statements or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for transportation, lodging or meals are unallowable unless incurred for the purpose of offering testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by paragraph (a)(3) of this subsection to influence state or local legislation in order to directly reduce contract cost, or to avoid material impairment of the contractor's authority to perform the contract.

(3) Any activity specifically authorized by statute to be undertaken with funds from the contract.

(c) When a contractor seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs.

(d) Contractors shall maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable (see 42.703-2) pursuant to this subsection complies with the requirements of this subsection.

(e) Existing procedures should be utilized to resolve in advance any significant questions or disagreements concerning the interpretation or application of this subsection.

31.205-23 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts) is unallowable.

31.205-24 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property, unless otherwise provided for) that neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see 31.205-11):

(1) Normal maintenance and repair costs are allowable.

(2) Extraordinary maintenance and repair costs are allowable, provided those costs are allocated to the applicable periods for purposes of determining contract costs (but see 31.109).

(b) Expenditures for plant and equipment, including rehabilitation which should be capitalized and subject to depreciation, according to generally accepted accounting principles as applied under the contractor's established policy or, when applicable, according to 48 CFR 9904.404, Capitalization of Tangible Assets, are allowable only on a depreciation basis.

31.205-25 Manufacturing and production engineering costs.

(a) The costs of manufacturing and production engineering effort as described in (1) through (4) of this paragraph are all allowable:

(1) Developing and deploying new or improved materials, systems, processes, methods, equipment, tools and techniques that are or are expected to be used in producing products or services;

(2) Developing and deploying pilot production lines;

(3) Improving current production functions, such as plant layout, production scheduling and control, methods and job analysis, equipment capabilities and capacities, inspection techniques, and tooling analysis (including tooling design and application improvements); and

(4) Material and manufacturing producibility analysis for production suitability and to optimize manufacturing processes, methods, and techniques.

(b) This cost principle does not cover—

(1) Basic and applied research effort (as defined in 31.205-18(a)) related to new technology, materials, systems, processes, methods, equipment, tools and techniques. Such technical effort is governed by 31.205-18, Independent research and development and bid and proposal costs; and

(2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques that are intended for sale is also governed by 31.205-18.

(c) Where manufacturing or production development costs are capitalized or required to be capitalized under the contractor's capitalization policies, allowable cost will be determined in accordance with the requirements of 31.205-11, Depreciation.

31.205-26 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, sub-assemblies, components, and manufacturing supplies, whether purchased or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs, consideration shall be given to reasonable overruns, spoilage, or defective work (unless otherwise provided in

any contract provision relating to inspecting and correcting defective work). These costs are allowable, subject to the requirements of paragraphs (b) through (e) of this section.

(b) Costs of material shall be adjusted for income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap, salvage, and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material or be allocated as a credit to indirect costs. When the contractor can demonstrate that failure to take cash discounts was reasonable, lost discounts need not be credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs; provided, such adjustments relate to the period of contract performance.

(d) When materials are purchased specifically for and are identifiable solely with performance under a contract, the actual purchase cost of those materials should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of future material costs are required, current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materials, supplies, and services that are sold or transferred between any divisions, subdivisions, subsidiaries, or affiliates of the contractor under a common control shall be on the basis of cost incurred in accordance with this subpart. However, allowance may be at price when it is the established practice of the transferring organization to price interorganizational transfers at other than cost for commercial work of the contractor or any division, subsidiary, or affiliate of the contractor under a common control, and when the item being transferred qualifies for an exception under 15.403-1(b) and the contracting officer has not determined the price to be unreasonable.

(f) When a commercial item under paragraph (e) of this subsection is transferred at a price based on a catalog or market price, the price should be adjusted to reflect the quantities being acquired and may be adjusted to reflect the actual cost of any modifications necessary because of contract requirements.

31.205-27 Organization costs.

(a) Except as provided in paragraph (b) of this subsection, expenditures in connection with (1) planning or executing the organization or reorganization of the corporate structure of a business, including mergers and acquisitions, (2) resisting or planning to resist the reorganization of the corporate structure of a business or a change in the controlling interest in the ownership of a business, and (3) raising capital (net worth plus long-term liabilities), are unallowable. Such

expenditures include but are not limited to incorporation fees and costs of attorneys, accountants, brokers, promoters and organizers, management consultants and investment counselors, whether or not employees of the contractor. Unallowable "reorganization" costs include the cost of any change in the contractor's financial structure, excluding administrative costs of short-term borrowings for working capital, resulting in alterations in the rights and interests of security holders, whether or not additional capital is raised.

(b) The cost of activities primarily intended to provide compensation will not be considered organizational costs subject to this subsection, but will be governed by 31.205-6. These activities include acquiring stock for—

- (1) Executive bonuses,
- (2) Employee savings plans, and
- (3) Employee stock ownership plans.

31.205-28 Other business expenses.

The following types of recurring costs are allowable when allocated on an equitable basis:

- (a) Registry and transfer charges resulting from changes in ownership of securities issued by the contractor.
- (b) Cost of shareholders' meetings.
- (c) Normal proxy solicitations.
- (d) Preparing and publishing reports to shareholders.
- (e) Preparing and submitting required reports and forms to taxing and other regulatory bodies.
- (f) Incidental costs of directors' and committee meetings.
- (g) Other similar costs.

31.205-29 Plant protection costs.

Costs of items such as—

- (a) Wages, uniforms, and equipment of personnel engaged in plant protection,
- (b) Depreciation on plant protection capital assets, and
- (c) Necessary expenses to comply with military requirements, are allowable.

31.205-30 Patent costs.

(a) The following patent costs are allowable to the extent that they are incurred as requirements of a Government contract (but see 31.205-33):

- (1) Costs of preparing invention disclosures, reports, and other documents.
- (2) Costs for searching the art to the extent necessary to make the invention disclosures.
- (3) Other costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is to be conveyed to the Government.

(b) General counseling services relating to patent matters, such as advice on patent laws, regulations, clauses, and employee agreements, are allowable (but see 31.205-33).

(c) Other than those for general counseling services, patent costs not required by the contract are unallowable. (See also 31.205-37.)

31.205-31 Plant reconversion costs.

Plant reconversion costs are those incurred in restoring or rehabilitating the contractor's facilities to approximately the same condition existing immediately before the start of the Government contract, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before costs are incurred. Care should be exercised to avoid duplication through allowance as contingencies, additional profit or fee, or in other contracts.

31.205-32 Precontract costs.

Precontract costs means costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109).

31.205-33 Professional and consultant service costs.

(a) *Definition.* "Professional and consultant services," as used in this subsection, means those services rendered by persons who are members of a particular profession or possess a special skill and who are not officers or employees of the contractor. Examples include those services acquired by contractors or subcontractors in order to enhance their legal, economic, financial, or technical positions. Professional and consultant services are generally acquired to obtain information, advice, opinions, alternatives, conclusions, recommendations, training, or direct assistance, such as studies, analyses, evaluations, liaison with Government officials, or other forms of representation.

(b) Costs of professional and consultant services are allowable subject to this paragraph and paragraphs (c) through (f) of this subsection when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government (but see 31.205-30 and 31.205-47).

(c) Costs of professional and consultant services performed under any of the following circumstances are unallowable:

- (1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (*e.g.*, 52.215-1(e), Restriction on Disclosure and Use of Data).

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor.

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest.

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or otherwise agreed to.

(d) In determining the allowability of costs (including retainer fees) in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the contracting officer shall consider the following factors, among others:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the contractor's capability in the particular area.

(3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.

(4) The impact of Government contracts on the contractor's business.

(5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

(6) Whether the service can be performed more economically by employment rather than by contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.

(8) Adequacy of the contractual agreement for the service (*e.g.*, description of the service, estimate of time required, rate of compensation, termination provisions).

(e) Retainer fees, to be allowable, must be supported by evidence that—

(1) The services covered by the retainer agreement are necessary and customary;

(2) The level of past services justifies the amount of the retainer fees (if no services were rendered, fees are not automatically unallowable);

(3) The retainer fee is reasonable in comparison with maintaining an in-house capability to perform the covered services, when factors such as cost and level of expertise are considered; and

(4) The actual services performed are documented in accordance with paragraph (f) of this subsection.

(f) Fees for services rendered shall be allowable only when supported by evidence of the nature and scope of the service furnished. (See also 31.205-38(f).) However, retainer agreements generally are not based on specific statements of work. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include—

(1) Details of all agreements (*e.g.*, work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organizations providing the services and details of actual services performed;

(2) Invoices or billings submitted by consultants, including sufficient detail as to the time expended and nature of the actual services provided; and

(3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings, and collateral memoranda and reports.

31.205-34 Recruitment costs.

(a) Subject to paragraph (b) of this subsection, the following costs are allowable:

(1) Costs of help-wanted advertising.

(2) Costs of operating an employment office needed to secure and maintain an adequate labor force.

(3) Costs of operating an aptitude and educational testing program.

(4) Travel costs of employees engaged in recruiting personnel.

(5) Travel costs of applicants for interviews.

(6) Costs for employment agencies, not in excess of standard commercial rates.

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

31.205-35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of assigned work location (for a period of 12 months or more) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family (see 31.205-46) and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee or the spouse, or both, to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs incident to the disposition of the actual residence owned by the employee when notified of the transfer (*e.g.*, brokerage fees, legal fees, appraisal fees, points, and finance charges), except that these costs, when added to the costs described in paragraph (a)(4) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, and mortgage interest, after the settlement date or lease date of a new permanent residence, except that these costs, when added to the costs described in paragraph (a)(3) of this subsection, shall not exceed 14 percent of the sales price of the property sold.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that—

(i) These costs are not allowable for existing employees or newly recruited employees who were not homeowners before the relocation; and

(ii) The total costs shall not exceed 5 percent of the purchase price of the new home.

(7) Mortgage interest differential payments, except that these costs are not allowable for existing or newly recruited employees who, before the relocation, were not homeowners and the total payments are limited to an amount determined as follows:

(i) The difference between the mortgage interest rates of the old and new residences times the current balance of the old mortgage times 3 years.

(ii) When mortgage differential payments are made on a lump-sum basis and the employee leaves or is transferred again in less than 3 years, the amount initially recognized shall be proportionately adjusted to reflect payments only for the actual time of the relocation.

(8) Rental differential payments covering situations where relocated employees retain ownership of a vacated home in the old location and rent at the new location. The rented quarters at the new location must be comparable to those vacated, and the allowable differential payments may not exceed the actual rental costs for the new home, less the fair market rent for the vacated home times 3 years.

(9) Costs of canceling an unexpired lease.

(10) Payments for increased employee income or Federal Insurance Contributions Act (26 U.S.C. chapter 21) taxes incident to allowable reimbursed relocation costs.

(11) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this subsection must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically.

(3) The costs must not be otherwise unallowable under Subpart 31.2.

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except that for miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a flat amount, not to exceed \$5,000, may be allowed in lieu of actual costs.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers' fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence. (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

(d) If relocation costs for an employee have been allowed either as an allocable indirect or direct cost, and the employee resigns within 12 months for reasons within the employee's control, the contractor shall refund or credit the relocation costs to the Government.

(e) Subject to the requirements of paragraphs (a) through (d) of this section, the costs of family movements and of personnel movements of a special or mass nature are allowable. The cost, however, should be assigned on the basis of work (contracts) or time period benefited.

(f) Relocation costs (both outgoing and return) of employees who are hired for performance on specific contracts or long-term field projects are allowable if—

(1) The term of employment is 12 months or more;

(2) The employment agreement specifically limits the duration of employment to the time spent on the contract or field project for which the employee is hired;

(3) The employment agreement provides for return relocation to the employee's permanent and principal home immediately prior to the outgoing relocation, or other location of equal or lesser cost; and

(4) The relocation costs are determined under the rules of paragraphs (a) through (d) of this section. However, the costs to return employees, who are released from employment upon completion of field assignments pursuant to their employment agreements, are not subject to the refund or credit requirement of paragraph (d).

31.205-36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Statement of Financial Accounting Standards No. 13 (FAS-13), Accounting for Leases. Compliance with 31.205-11(m) requires that assets acquired by means of capital leases, as defined in FAS-13, shall be treated as purchased assets; *i.e.*, be capitalized and the capitalized value of such assets be distributed over their useful lives as depreciation charges, or over the lease term as amortization charges, as appropriate (but see paragraph (b)(4) of this section).

(b) The following costs are allowable:

(1) Rental costs under operating leases, to the extent that the rates are reasonable at the time of the lease decision, after consideration of—

(i) Rental costs of comparable property, if any;

(ii) Market conditions in the area;

(iii) The type, life expectancy, condition, and value of the property leased;

(iv) Alternatives available; and

(v) Other provisions of the agreement.

(2) Rental costs under a sale and leaseback arrangement only up to the amount the contractor would be allowed if the contractor retained title.

(3) Charges in the nature of rent for property between any divisions, subsidiaries, or organizations under common control, to the extent that they do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, facilities capital cost of money, and maintenance (excluding

interest or other unallowable costs pursuant to Part 31), provided that no part of such costs shall duplicate any other allowed cost. Rental cost of personal property leased from any division, subsidiary, or affiliate of the contractor under common control, that has an established practice of leasing the same or similar property to unaffiliated lessees shall be allowed in accordance with paragraph (b)(1) of this subsection.

(4) Rental costs under leases entered into before March 1, 1970 for the remaining term of the lease (excluding options not exercised before March 1, 1970) to the extent they would have been allowable under Defense Acquisition Regulation (formerly ASPR) 15-205.34 or Federal Procurement Regulations section 1-15.205-34 in effect January 1, 1969.

(c) The allowability of rental costs under unexpired leases in connection with terminations is treated in 31.205-42(e).

31.205-37 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of purchasing a patent or patent rights necessary for the proper performance of the contract and applicable to contract products or processes are allowable unless—

(1) The Government has a license or the right to a free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Care should be exercised in determining reasonableness when the royalties may have been arrived at as a result of less-than-arm's-length bargaining; *e.g.*, royalties—

(1) Paid to persons, including corporations, affiliated with the contractor;

(2) Paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Paid under an agreement entered into after the contract award.

(c) In any case involving a patent formerly owned by the contractor, the royalty amount allowed should not exceed the cost which would have been allowed had the contractor retained title.

(d) See 31.109 regarding advance agreements.

31.205-38 Selling costs.

(a) "Selling" is a generic term encompassing all efforts to market the contractor's products or services, some of which are covered specifically in other subsections of 31.205. Selling activity includes the following broad categories:

(1) Advertising.

(2) Corporate image enhancement including broadly-targeted sales efforts, other than advertising.

- (3) Bid and proposal costs.
- (4) Market planning.
- (5) Direct selling.

(b) Advertising costs are defined at 31.205-1(b) and are subject to the allowability provisions of 31.205-1(d) and (f). Corporate image enhancement activities are included within the definitions of public relations at 31.205-1(a) and entertainment at 31.205-14 and are subject to the allowability provisions at 31.205-1(e) and (f) and 31.205-14, respectively. Bid and proposal costs are defined at 31.205-18 and have their allowability controlled by that subsection. Market planning involves market research and analysis and generalized management planning concerned with development of the contractor's business. The allowability of long-range market planning costs is controlled by the provisions of 31.205-12. Other market planning costs are allowable to the extent that they are reasonable and not in excess of the limitations of paragraph (c)(2) of this subsection. Costs of activities which are correctly classified and disallowed under cost principles referenced in this paragraph (b) are not to be reconsidered for reimbursement under any other provision of this subsection.

(c)(1) Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such activities as familiarizing a potential customer with the contractor's products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting activities, individual demonstrations, and any other activities having as their purpose the application or adaptation of the contractor's products or services for a particular customer's use. The cost of direct selling efforts is allowable if reasonable in amount.

(2) The costs of broadly targeted and direct selling efforts and market planning other than long-range, that are incurred in connection with a significant effort to promote export sales of products normally sold to the U.S. Government, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the U.S. Government provided the costs are allocable, reasonable, and otherwise allowable under this Subpart 31.2.

(d) The costs of any selling efforts other than those addressed in paragraphs (b) or (c) of this subsection are unallowable.

(e) Costs of the type identified in paragraphs (b), (c), and (d) of this subsection are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of 31.201-6 and 30.405, and

such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Notwithstanding any other provision of this subsection, sellers' or agents' compensation, fees, commissions, percentages, retainer or brokerage fees, whether or not contingent upon the award of contracts, are allowable only when paid to bona fide employees or established commercial or selling agencies maintained by the contractor for the purpose of securing business.

31.205-39 Service and warranty costs.

Service and warranty costs include those arising from fulfillment of any contractual obligation of a contractor to provide services such as installation, training, correcting defects in the products, replacing defective parts, and making refunds in the case of inadequate performance. When not inconsistent with the terms of the contract, service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

31.205-40 Special tooling and special test equipment costs.

(a) The terms "special tooling" and "special test equipment" are defined in 45.101.

(b) The cost of special tooling and special test equipment used in performing one or more Government contracts is allowable and shall be allocated to the specific Government contract or contracts for which acquired, except that the cost of—

(1) Items acquired by the contractor before the effective date of the contract (or replacement of such items), whether or not altered or adapted for use in performing the contract, and

(2) Items which the contract schedule specifically excludes, shall be allowable only as depreciation or amortization.

(c) When items are disqualified as special tooling or special test equipment because with relatively minor expense they can be made suitable for general purpose use and have a value as such commensurate with their value as special tooling or special test equipment, the cost of adapting the items for use under the contract and the cost of returning them to their prior configuration are allowable.

31.205-41 Taxes.

(a) The following types of costs are allowable:

(1) Federal, State, and local taxes (see Part 29), except as otherwise provided in paragraph (b) of this section that are required to be and are paid or accrued in accordance with generally accepted accounting principles. Fines and penalties are not considered taxes.

(2) Taxes otherwise allowable under paragraph (a)(1) of this section, but upon which a claim of illegality or erroneous assessment exists; provided the contractor, before paying such taxes—

(i) Promptly requests instructions from the contracting officer concerning such taxes; and

(ii) Takes all action directed by the contracting officer arising out of paragraph (2)(i) of this section or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, to—

(A) Determine the legality of the assessment or

(B) Secure a refund of such taxes.

(3) Pursuant to paragraph (a)(2) of this section, the reasonable costs of any action taken by the contractor at the direction or with the concurrence of the contracting officer. Interest or penalties incurred by the contractor for non-payment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to ensure timely direction after a prompt request.

(4) The Environmental Tax found at section 59A of the Internal Revenue Code, also called the “Superfund Tax.”

(b) The following types of costs are not allowable:

(1) Federal income and excess profits taxes.

(2) Taxes in connection with financing, refinancing, refunding operations, or reorganizations (see 31.205-20 and 31.205-27).

(3) Taxes from which exemptions are available to the contractor directly, or available to the contractor based on an exemption afforded the Government, except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government. When partial exemption from a tax is attributable to Government contract activity, taxes charged to such work in excess of that amount resulting from application of the preferential treatment are unallowable. These provisions intend that tax preference attributable to Government contract activity be realized by the Government. The term “exemption” means freedom from taxation in whole or in part and includes a tax abatement or reduction resulting from mode of assessment, method of calculation, or otherwise.

(4) Special assessments on land that represent capital improvements.

(5) Taxes (including excises) on real or personal property, or on the value, use, possession or sale thereof, which is used solely in connection with work other than on Government contracts (see paragraph (c) of this section).

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

(7) Income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the books of account and financial statements.

(c) Taxes on property (see paragraph (b)(5) of this section) used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; *e.g.*, taxes on contractor-owned work-in-process which is used solely in connection with non-Government work should be allocated to such work; taxes on contractor-owned work-in-process inventory (and Government-owned work-in-process inventory when taxed) used solely in connection with Government work should be charged to such work. The cost of taxes incurred on property used in both Government and non-Government work shall be apportioned to all such work based upon the use of such property on the respective final cost objectives.

(d) Any taxes, interest, or penalties that were allowed as contract costs and are refunded to the contractor shall be credited or paid to the Government in the manner it directs. If a contractor or subcontractor obtains a foreign tax credit that reduces its U.S. Federal income tax because of the payment of any tax or duty allowed as contract costs, and if those costs were reimbursed by a foreign government, the amount of the reduction shall be paid to the Treasurer of the United States at the time the Federal income tax return is filed. However, any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

31.205-42 Termination costs.

Contract terminations generally give rise to the incurrance of costs or the need for special treatment of costs that would not have arisen had the contract not been terminated. The following cost principles peculiar to termination situations are to be used in conjunction with the other cost principles in Subpart 31.2:

(a) *Common items.* The costs of items reasonably usable on the contractor’s other work shall not be allowable unless the contractor submits evidence that the items could not be retained at cost without sustaining a loss. The contracting officer should consider the contractor’s plans and orders for current and planned production when determining if items can reasonably be used on other work of the contractor. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor’s other work. Any acceptance of common items as allocable to the terminated portion of the

contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* Despite all reasonable efforts by the contractor, costs which cannot be discontinued immediately after the effective date of termination are generally allowable. However, any costs continuing after the effective date of the termination due to the negligent or willful failure of the contractor to discontinue the costs shall be unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable as follows:

(1) Starting load costs not fully absorbed because of termination are nonrecurring labor, material, and related overhead costs incurred in the early part of production and result from factors such as—

- (i) Excessive spoilage due to inexperienced labor;
- (ii) Idle time and subnormal production due to testing and changing production methods;
- (iii) Training; and
- (iv) Lack of familiarity or experience with the product, materials, or manufacturing processes.

(2) Preparatory costs incurred in preparing to perform the terminated contract include such costs as those incurred for initial plant rearrangement and alterations, management and personnel organization, and production planning. They do not include special machinery and equipment and starting load costs.

(3) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead. Initial costs attributable to only one contract shall not be allocated to other contracts.

(4) If initial costs are claimed and have not been segregated on the contractor's books, they shall be segregated for settlement purposes from cost reports and schedules reflecting that high unit cost incurred during the early stages of the contract.

(5) If the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately before termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(d) *Loss of useful value.* Loss of useful value of special tooling, and special machinery and equipment is generally allowable, provided—

(1) The special tooling, or special machinery and equipment is not reasonably capable of use in the other work of the contractor;

(2) The Government's interest is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value for any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling, or special machinery and equipment was acquired.

(e) *Rental under unexpired leases.* Rental costs under unexpired leases, less the residual value of such leases, are generally allowable when shown to have been reasonably necessary for the performance of the terminated contract, if—

(1) The amount of rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

(f) *Alterations of leased property.* The cost of alterations and reasonable restorations required by the lease may be allowed when the alterations were necessary for performing the contract.

(g) *Settlement expenses.* (1) Settlement expenses, including the following, are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for—

(A) The preparation and presentation, including supporting data, of settlement claims to the contracting officer; and

(B) The termination and settlement of subcontracts.

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(iii) Indirect costs related to salary and wages incurred as settlement expenses in (i) and (ii); normally, such indirect costs shall be limited to payroll taxes, fringe benefits, occupancy costs, and immediate supervision costs.

(2) If settlement expenses are significant, a cost account or work order shall be established to separately identify and accumulate them.

(h) *Subcontractor claims.* Subcontractor claims, including the allocable portion of the claims common to the contract and to other work of the contractor, are generally allowable. An appropriate share of the contractor's indirect expense may be allocated to the amount of settlements with subcontractors; provided, that the amount allocated is reasonably proportionate to the relative benefits received and is otherwise consistent with 31.201-4 and 31.203(c). The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

31.205-43 Trade, business, technical and professional activity costs.

The following types of costs are allowable:

(a) Memberships in trade, business, technical, and professional organizations.

(b) Subscriptions to trade, business, professional, or other technical periodicals.

(c) When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—

(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs (see 31.205-46); and

(3) Costs of attendance by individuals who are not employees of the contractor, provided—

(i) Such costs are not also reimbursed to the individual by the employing company or organization, and

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

31.205-44 Training and education costs.

(a) *Allowable costs.* Training and education costs are allowable to the extent indicated below.

(b) *Vocational training.* Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include—

(1) Salaries or wages of trainees (excluding overtime compensation),

(2) Salaries of the director of training and staff when the training program is conducted by the contractor,

(3) Tuition and fees when the training is in an institution not operated by the contractor, and/or

(4) Training materials and textbooks.

(c) *Part-time college level education.* Allowable costs of part-time college education at an undergraduate or postgraduate level, including that provided at the contractor's own facilities, are limited to—

(1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;

(2) Salaries and related costs of instructors who are employees of the contractor;

(3) Training materials and textbooks; and

(4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) of this subsection).

(d) *Full-time education.* Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(e) *Specialized programs.* Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related charges and employees' salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.

(f) *Other expenses.* Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205-11, 31.205-17, 31.205-24, and 31.205-36.

(g) *Grants.* Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(h) *Advance agreements.* (1) Training and education costs in excess of those otherwise allowable under paragraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors as—

(i) The length of employees' service with the contractor;

(ii) Employees' past performance and potential;

(iii) Whether employees are in formal development programs; and

(iv) The total number of participating employees.

(2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.

(i) *Training or education costs for other than bona fide employees.* Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.

(j) *Employee dependent education plans.* Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

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

31.205-46 Travel costs.

(a) *Costs for transportation, lodging, meals, and incidental expenses.* (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.

(2) Except as provided in paragraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this paragraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—

(i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the:

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

Stock No. 922-002-00000-2

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

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

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

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

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

Stock No. 744-008-00000-0

(3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:

(i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.

(ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.

(iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.

(iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.

(4) Paragraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.

(5) An advance agreement (see 31.109) with respect to compliance with paragraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.

(6) The maximum per diem rates referenced in paragraph (a)(2) of this subsection generally would not constitute a reasonable daily charge—

- (i) When no lodging costs are incurred; and/or
- (ii) On partial travel days (*e.g.*, day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in accordance with the Federal Travel Regulation or Joint Travel Regulations, they must result in a reasonable charge.

(7) Costs shall be allowable only if the following information is documented—

- (i) Date and place (city, town, or other similar designation) of the expenses;
- (ii) Purpose of the trip; and
- (iii) Name of person on trip and that person's title or relationship to the contractor.

(b) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(c) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract under 31.202.

(d) Airfare costs in excess of the lowest customary standard, coach, or equivalent airfare offered during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above standard airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

(e)(1) "Cost of travel by contractor-owned, -leased, or -chartered aircraft," as used in this paragraph, includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs.

(2) The costs of travel by contractor-owned, -leased, or -chartered aircraft are limited to the standard airfare described in paragraph (d) of this subsection for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer. A higher amount may be agreed to when one or more of the circumstances for justifying higher than standard airfare listed in paragraph (d) of this subsection are applicable, or when an advance agreement under paragraph (e)(3) of this subsection has been executed. In all cases, travel by contractor-owned, -leased, or -chartered aircraft must be fully documented and justified. For each contractor-owned, -leased, or -chartered aircraft used for any business purpose which is charged or allocated, directly or indirectly, to a Government contract, the contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate—

- (i) Date, time, and points of departure;
- (ii) Destination, date, and time of arrival;
- (iii) Name of each passenger and relationship to the contractor;
- (iv) Authorization for trip; and
- (v) Purpose of trip.

(3) Where an advance agreement is proposed (see 31.109), consideration may be given to the following:

- (i) Whether scheduled commercial airlines or other suitable, less costly, travel facilities are available at reasonable times, with reasonable frequency, and serve the required destinations conveniently.
- (ii) Whether increased flexibility in scheduling results in time savings and more effective use of personnel that would outweigh additional travel costs.

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

31.205-47 Costs related to legal and other proceedings.

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

"Costs" include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.

“Fraud,” as used in this subsection, means—

(1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents;

(2) Acts which constitute a cause for debarment or suspension under 9.406-2(a) and 9.407-2(a); and

(3) Acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

“Penalty,” does not include restitution, reimbursement, or compensatory damages.

“Proceeding,” includes an investigation.

(b) Costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, 31 U.S.C. 3730, are unallowable if the result is—

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct or imposition of a monetary penalty where the proceeding does not involve an allegation of fraud or similar misconduct;

(3) A final decision by an appropriate official of an executive agency to—

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in paragraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by paragraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (4) of this subsection.

(c)(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that

are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with:

(1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government (see 2.101).

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also 31.205-27).

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either—

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when—

(A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(B) When agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

(g) Costs which may be unallowable under 31.205-47, including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and paragraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

31.205-48 Deferred research and development costs.

“Research and development,” as used in this section, means the type of technical effort described in 31.205-18 but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

31.205-49 Goodwill.

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

31.205-50 [Reserved]

31.205-51 Costs of alcoholic beverages.

Costs of alcoholic beverages are unallowable.

31.205-52 Asset valuations resulting from business combinations.

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

Subpart 31.3—Contracts with Educational Institutions**31.301 Purpose.**

This subpart provides the principles for determining the cost of research and development, training, and other work performed by educational institutions under contracts with the Government.

31.302 General.

Office of Management and Budget (OMB) Circular No. A-21, Cost Principles for Educational Institutions, revised, provides principles for determining the costs applicable to

research and development, training, and other work performed by educational institutions under contracts with the Government.

31.303 Requirements.

(a) Contracts that refer to this Subpart 31.3 for determining allowable costs under contracts with educational institutions shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-21 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost.

Subpart 31.4—[Reserved]

Subpart 31.5—[Reserved]

Subpart 31.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

31.601 Purpose.

This subpart provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

31.602 General.

Office of Management and Budget (OMB) Circular No. A-87, Cost Principles for State and Local Governments, Revised, sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

31.603 Requirements.

(a) Contracts that refer to this Subpart 31.6 for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, the following costs are unallowable:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result of compliance with specific terms and conditions of

the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a “golden parachute payment”) which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor's assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in 10 U.S.C. 2324(k) or 41 U.S.C. 256(k).

Subpart 31.7—Contracts with Nonprofit Organizations

31.701 Purpose.

This subpart provides the principles for determining the cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

31.702 General.

Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Nonprofit Organizations, sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

31.703 Requirements.

(a) Contracts which refer to this Subpart 31.7 for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, the costs cited in 31.603(b) are unallowable.

* * * * *

- | | | | |
|---------|---|---------|---|
| 32.1007 | Administration and payment of performance-based payments. | 32.1103 | Applicability. |
| 32.1008 | Suspension or reduction of performance-based payments. | 32.1104 | Protection of EFT information. |
| 32.1009 | Title. | 32.1105 | Assignment of claims. |
| 32.1010 | Risk of loss. | 32.1106 | EFT mechanisms. |
| | | 32.1107 | Payment information. |
| | | 32.1108 | Payment by Governmentwide commercial purchase card. |
| | | 32.1109 | EFT information submitted by offerors. |
| | | 32.1110 | Solicitation provision and contract clauses. |
- Subpart 32.11—Electronic Funds Transfer**
- | | |
|---------|-------------------------|
| 32.1100 | Scope of subpart. |
| 32.1101 | Statutory requirements. |
| 32.1102 | Definitions. |

32.000 Scope of part.

This part prescribes policies and procedures for contract financing and other payment matters. This part addresses—

- (a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;
- (b) Loan guarantees, advance payments, and progress payments based on costs;
- (c) Administration of debts to the Government arising out of contracts;
- (d) Contract funding, including the use of contract clauses limiting costs or funds;
- (e) Assignment of claims to aid in private financing;
- (f) Selected payment clauses;
- (g) Financing of purchases of commercial items;
- (h) Performance-based payments; and
- (i) Electronic funds transfer payments.

32.001 Definitions.

As used in this part—

“Commercial interim payment” means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes. A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

“Contract action” means an action resulting in a contract, as defined in Subpart 2.1, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

“Contract financing payment” means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

- (1) Contract financing payments include—
 - (i) Advance payments;
 - (ii) Performance-based payments;
 - (iii) Commercial advance and interim payments;
 - (iv) Progress payments based on cost under the clause at 52.232-16, Progress Payments;
 - (v) Progress payments based on a percentage or stage of completion (see 32.102(e)), except those made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and
 - (vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.

- (2) Contract financing payments do not include—

- (i) Invoice payments;
- (ii) Payments for partial deliveries; or
- (iii) Lease and rental payments.

“Customary contract financing” means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.

“Delivery payment” means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

“Designated billing office” means the office or person (governmental or nongovernmental) designated in the contract where the contractor first submits invoices and contract financing requests. The contract might designate different offices to receive invoices and contract financing requests. The designated billing office might be—

- (1) The Government disbursing office;
- (2) The contract administration office;
- (3) The office accepting the supplies delivered or services performed by the contractor;
- (4) The contract audit office; or
- (5) A nongovernmental agent.

“Designated payment office” means the office designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

“Due date” means the date on which payment should be made.

“Invoice payment” means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

- (1) Invoice payments include—
 - (i) Payments for partial deliveries that have been accepted by the Government;
 - (ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;
 - (iii) For purposes of Subpart 32.9 only, all payments made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, and the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts; and
 - (iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at 52.232-25, Prompt Payment, is used.
- (2) Invoice payments do not include contract financing payments.

“Unusual contract financing” means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and

proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

32.002 Applicability of subparts.

(a) The following sections and subparts of this part are applicable to all purchases subject to Part 32:

- (1) Sections 32.000 through 32.005.
- (2) Subpart 32.3, Loan Guarantees for Defense Production.
- (3) Subpart 32.6, Contract Debts.
- (4) Subpart 32.7, Contract Funding.
- (5) Subpart 32.8, Assignment of Claims.
- (6) Subpart 32.9, Prompt Payment.
- (7) Subpart 32.11, Electronic Funds Transfer.

(b) Subpart 32.2, Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of Part 12.

(c) The following subparts of this part are applicable to all purchases made under any authority other than Part 12:

- (1) Subpart 32.1, Non-Commercial Item Purchase Financing.
- (2) Subpart 32.4, Advance Payments For Non-Commercial Items.
- (3) Subpart 32.5, Progress Payments Based on Costs.
- (4) Subpart 32.10, Performance-Based Payments.

32.003 Simplified acquisition procedures financing.

Unless approved by Director, MMS, contract financing shall not be provided for purchases made under the authority of Part 13.

32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no sep-

arate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either (1) a bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or (2) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

- (1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.
- (2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in Subpart 32.4, Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

32.006 [Reserved]

32.006-1 [Reserved]

32.006-2 [Reserved]

32.006-3 [Reserved]

32.006-4 [Reserved]

32.006-5 [Reserved]

32.007 [Reserved]

Subpart 32.1—[Reserved]

Subpart 32.2—[Reserved]

Subpart 32.3—[Reserved]

Subpart 32.4—Advance Payments for Non-Commercial Items

32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in 32.404. This subpart does not apply to commercial advance payments, which are subject to Subpart 32.2.

32.401 Statutory authority.

MMS may authorize advance payments in negotiated and sealed bid contracts if the action is appropriate under—

(a) Pub. L. 85-804 (50 U.S.C. 1431-1435) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see Part 50 of the Materials Management Acquisition Regulation (MMAR) for other applications of this statute).

32.402 General.

(a) A limitation on authority to grant advance payments under Pub. L. 85-804 (50 U.S.C. 1431-1435) is described at MMAR 50.203(b)(4).

(b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in 32.403(a) and (b), advance payment is the least preferred method of contract financing (see 32.106) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.

(c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.

(1) The statutory requirements are that—

(i) The contractor gives adequate security;

(ii) The advance payments will not exceed the unpaid contract price (see 32.410(b), paragraph (a)(2)); and

(iii) The agency head or designee determines, based on written findings, that the advance payment—

(A) Is in the public interest (under 32.401(a) or (b)); or

(B) Facilitates the national defense (under 32.401(c)).

(2) The standards for advance payment determinations are that—

(i) The advance payments will not exceed the contractor's interim cash needs based on—

(A) Analysis of the cash flow required for contract performance;

(B) Consideration of the reimbursement or other payment cycle; and

(C) To the extent possible, employment of the contractor's own working capital;

(ii) The advance payments are necessary to supplement other funds or credit available to a contractor;

(iii) The recipient is otherwise qualified as a responsible contractor;

(iv) The Government will benefit from performance prospects or there are other practical advantages; and

(v) The case fits one or more of the categories described in 32.403.

(d) If necessary, the agency may authorize advance payments in addition to progress or partial payments on the same contract (see 32.501-1(c)).

(e) Each agency that provides advance payments shall—

(1) Place the responsibility for making findings and determinations, and for approval of contract terms concerning advance payments (see 32.410), at an organizational level high enough to ensure uniform application of this subpart (see the limitation at 50.201(b) which also applies to advance payments authorized under Pub. L. 85-804 (50 U.S.C. 1431-1435)); and

(2) Establish procedures for coordination, before advance payment authorization, with the activity that provides contract financing support.

(f) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of MMAR 50.307.

32.403 Applicability.

Advance payments may be considered useful and appropriate for the following:

(a) Contracts for experimental, research, or development work with nonprofit educational or research institutions.

(b) Contracts solely for the management and operation of Government-owned plants.

(c) Contracts for acquisition at cost of facilities for Government ownership.

(d) Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract.

(e) Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency. In these cases, the agency shall closely monitor the contractor's performance and financial controls to reduce the Government's financial risk.

(f) Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued; for example, if—

(1) Financing institutions will not assume a reasonable portion of the risk under a guaranteed loan;

(2) Loans with reasonable interest rates or finance charges are not available to the contractor; or

(3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.

(g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see 32.104(b)).

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

(1) Rent;

(2) Tuition;

(3) Insurance premiums;

(4) Expenses of investigations in foreign countries;

(5) Extension or connection of public utilities for Government buildings or installations;

(6) Subscriptions to publications;

(7) Purchases of supplies or services in foreign countries, if—

(i) The purchase price does not exceed \$10,000 (or equivalent amount of the applicable foreign currency); and

(ii) The advance payment is required by the laws or government regulations of the foreign country concerned;

(8) Enforcement of the customs or narcotics laws; or

(9) Other types of transactions excluded by agency procedures under statutory authority.

(b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) of this section authorized under statutes relevant to their agencies.

32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in 50.101(a), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

(1) Enter into the contract and provide for advance payments conforming to this Part 32;

(2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or

(3) Deny award of the contract if the request for advance payments has been disapproved under 32.409-2 and funds adequate for performance are not otherwise available to the offeror.

32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR part 205), and the implementing instructions in the Treasury Financial Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

(1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least \$120,000 a year.

(2) By direct Treasury check if the circumstances do not meet the criteria in paragraph (b)(1) of this section.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter of credit, the agency shall follow arrangements made under Treasury procedures for—

(1) Consolidating funding to the same contractor under one letter of credit or

(2) Replacing multiple letters of credit with a single letter of credit.

(d) The letter of credit enables the contractor to withdraw Government funds in amounts needed to cover its own disbursements of cash for contract performance. Whenever feasible, the agency shall, under the direction and approval of the Department of the Treasury, use a letter of credit method that requires the contractor not to withdraw the Government funds until the contractor's checks have been—

(1) Forwarded to the payees (delay of drawdown technique), or

(2) Presented to the contractor's bank for payment (checks paid technique) (see 31 CFR 205.3 and 205.4(d)).

(e) The Treasury regulations provide for terminating the advance financing arrangement if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In such cases, if reversion to normal payment methods is not feasible, the Treasury regulation provides for use of a working capital method of advance; *i.e.*, for limiting advances to—

(1) Only the estimated disbursements for a given initial period and

(2) Subsequently, for only actual cash disbursements (31 CFR 205.3(k) and 205.7).

32.407 Interest.

(a) Except as provided in paragraph (d) of this section, the contracting officer shall charge interest on the daily unliquidated balance of all advance payments at the higher of—

(1) The published prime rate of the financial institution (depository) in which the special account (see 32.409-3) is established; or

(2) The rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2).

(b) The interest rate for advance payments shall be adjusted for changes in the prime rate of the depository and the semiannual determination by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). The contracting officer shall obtain data from the depository on changes in the interest rate during the month. Interest shall be computed at the end of each month on the daily unliquidated balance of advance payments at the applicable daily interest rate.

(c) Interest shall be required on contracts that are for acquisition, at cost, of facilities for Government ownership, if the contracts are awarded in combination with, or in contemplation of, supply contracts or subcontracts.

(d) The agency head or designee may authorize advance payments without interest under the following types of contracts, if in the Government's interest:

(1) Contracts for experimental, research, or development work (including studies, surveys, and demonstrations in socio-economic areas) with nonprofit education or research institutions.

(2) Contracts solely for the management and operation of Government-owned plants.

(3) Cost-reimbursement contracts with governments, including State or local governments, or their instrumentalities.

(4) Other classes of contracts, or unusual cases, for which the exclusion of interest on advances is specifically authorized by agency procedures.

(e) If a contract provides for interest-free advance payments, the contracting officer may require the contractor to charge interest on advances or downpayments to subcontractors and credit the Government for the proceeds from the interest charges. Interest rates shall be determined as described in paragraphs (a) and (b) of this section. The contracting officer need not require the contractor to charge interest on an advance to a subcontractor that is an institution of the kind described in paragraph (d)(1) of this section.

(f) The contracting officer shall not allow interest charges, required by this 32.407, as reimbursable costs under

cost-reimbursement contracts, whether the interest charge was incurred by the prime contractor or a subcontractor.

32.408 Application for advance payments.

(a) A contractor may apply for advance payments before or after the award of a contract.

(b) The contractor shall submit any advance payment request in writing to the contracting officer and provide the following information:

(1) A reference to the contract if the request concerns an existing contract, or a reference to the solicitation if the request concerns a proposed contract.

(2) A cash flow forecast showing estimated disbursements and receipts for the period of contract performance. If the application pertains to a type of contract described in 32.403(a) or (b), the contractor shall limit the forecast to the contract to be financed by advance payments.

(3) The proposed total amount of advance payments.

(4) The name and address of the financial institution at which the contractor expects to establish a special account as depository for the advance payments. If advance payments in the form of a letter of credit are anticipated, the contractor shall identify the specific account at the financial institution to be used. This paragraph (b)(4) is not applicable if an alternate method is used under agency procedures.

(5) A description of the contractor's efforts to obtain unguaranteed private financing or a V-loan (see 32.301) under eligible contracts. This requirement is not applicable to the contract types described in 32.403(a) or (b).

(6) Other information appropriate to an understanding of (i) the contractor's financial condition and need, (ii) the contractor's ability to perform the contract without loss to the Government, and (iii) financial safeguards needed to protect the Government's interest. Ordinarily, if the contract is a type described in 32.403(a) or (b), the contractor may limit the response to this paragraph (b)(6) to information on the contractor's reliability, technical ability, and accounting system and controls.

32.409 Contracting officer action.

After analysis of the contractor's application and any appropriate investigation, the contracting officer shall recommend approval or disapproval and transmit the request and recommendation to the approving authority designated under 32.402(e).

32.409-1 Recommendation for approval.

If recommending approval, the contracting officer shall transmit the following, under agency procedures, to the approving authority:

(a) Contract data, including—

(1) Identification and date of the award;

(2) Citation of the appropriation;

- (3) Type and dollar amount of the contract;
- (4) Items to be supplied, schedule of deliveries or performance, and status of any deliveries or performance;
- (5) The contract fee or profit contemplated; and
- (6) A copy of the contract, if available.
- (b) The contractor's request and supporting information.
- (c) A report on the contractor's past performance, responsibility, technical ability, and plant capacity.
- (d) Comments on—
 - (1) The contractor's need for advance payments; and
 - (2) Potential Government benefits from the contract performance.
- (e) Proposed advance payment contract terms, including proposed security requirements.
- (f) The findings, determination, and authorization (see 32.410).
- (g) The recommendation for approval of the advance payment request.
- (h) Justification of any proposal for waiver of interest charges (see 32.407).

32.409-2 Recommendation for disapproval

If recommending disapproval, the contracting officer shall, under agency procedures, transmit—

- (a) The items prescribed in 32.409-1(a), (b), and (c); and
- (b) The recommendation for disapproval and the reasons.

32.409-3 Security, supervision, and covenants.

(a) If advance payments are approved, the contracting officer shall enter into an agreement with the contractor covering special accounts and suitable covenants protecting the Government's interest (see 32.411). This requirement generally applies under all statutory authorities, but modified requirements applicable to certain specific cases are prescribed in paragraphs (e) through (g) of this section.

(b) The agency shall—

- (1) Ensure that the amount of advance payments does not exceed the contractor's financial needs, and
- (2) Closely supervise the contractor's withdrawal of funds from special accounts in which the advance payments are deposited.

(c) In the terms of the agreement, the contracting officer should provide for a paramount lien in favor of the Government. This lien may supplement or replace other security requirements. The lien should cover—

- (1) Supplies being acquired;
- (2) Any credit balance in the special account in which advance payments are deposited; and
- (3) All property that the contractor acquires for performing the contract, except to the extent to which the Government otherwise has valid title to the property.

(d) Security requirements vary to fit the circumstances of different cases. Minimum security requirements are covered

by the clauses prescribed in the contract. The contracting officer may supplement these as necessary in each case for protection of the Government's interest. Examples of additional security terms are—

- (1) Personal or corporate endorsements or guarantees;
- (2) Pledges of collateral;
- (3) Subordination or standby of other indebtedness;
- (4) Controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, retirement of stock or debt, and creation of additional obligations; and
- (5) Advance payment bonds (rarely required).

(e) In an advance payment agreement with an instrumentality of the Government, a State, a local government, or an agency or instrumentality of a State or local government, the contracting officer may omit the requirement for deposit of the advances in a special account, if the official approving the advance determines that other adequate security exists to protect the Government's interest.

(f) The requirements of this 32.409-3 do not apply when using letters of credit if an agency's procedures provide for—

(1) The use under a cost-reimbursement contract of Federal funds deposited in the contractor's account at a financial institution (without the contractor acquiring title to the funds); and

(2) The security of such deposit of public moneys in accordance with governing regulations of the Treasury Department.

(g) If a separate special account is not required; *e.g.*, advance payment by a letter of credit, an agency may require a special account for an individual case, or classes of cases, if the circumstances warrant.

32.410 Findings, determination, and authorization.

(a) Each determination concerning advance payments shall be supported by written findings (see 32.402(c)(1)(iii)).

(b) The following is an example of the format and text of findings, determination, and authorization with alternative words, phrases, and paragraphs to be selected to conform to the circumstances involved:

FINDINGS, DETERMINATION, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

(a) The undersigned hereby finds that:

(1) The _____ [*Insert the name of the contracting activity*] and _____ [*Insert the name of the contractor*] (have entered) (propose to enter) into (negotiated) (sealed bid) Contract No. _____, dated _____. [*Summarize the specific facts and significant circumstances concerning the contract and the contractor, that,*

together with the other findings, will clearly support the determination below.]

(2) Advance payments (in an amount not to exceed \$_____ at any time outstanding) (in an aggregate amount not exceeding \$_____, less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor to perform under the contract. The amount does not exceed the unpaid contract price or the estimated interim cash needs arising during the reimbursement cycle.

(3) The advance payments are necessary for prompt, efficient contract performance that will benefit the Government.

(4) The proposed advance payment clause provides for security for the protection of the Government. The clause requires that all payments will be deposited in a special account at the Contractor’s financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. [Insert the following, if applicable: (The Contractor’s financial management system provides for effective control over and accountability for all Federal funds under governing regulations of the Treasury Department.) (An advance payment bond is required.)] This security is considered adequate.

(5) Advance payments are the only adequate means of financing available to the Contractor, and the amount designated in (2) of this section is based, to the extent possible, on the use of the Contractor’s own working capital in performing the contract. [Insert paragraph (6), (7), or (8), as applicable.]

(6) The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (, (research and development) work.

(7) The contract is solely for the management and operation of a Government-owned plant.

(8) The following unusual facts and circumstances favor making advance payments to the Contractor without interest: [List the pertinent facts and circumstances.]

DETERMINATION

(b) Based on the findings in paragraph (a) of this section, the undersigned determined that the making of the proposed advance payments, (with interest at the rate of _____ [Insert the interest rate computed in accordance with 32.407] percent on the daily unliquidated balance of the advance payments,) (without interest, except as provided by the proposed advance payment clause,) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

(c) The advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$_____, are hereby authorized under (the Extraordinary Contracting Authority of Government Agencies

in Connection with National Defense Functions (50 U.S.C. 1431-1435) and Executive Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp. pp. 72-74)) [or, if other, cite appropriate authority] on (terms substantially as contained in the proposed advance payment clause, a copy (an outline) of which is annexed to this authorization) (the following terms:) [Insert the appropriate terms.] (All prior authorizations for advance payments under Contract No. _____ are superseded.)

[Signature]

[Name Typed]

[Title of Authorized Official]

[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Paragraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental or research work and with a nonprofit educational or research institution, or (b) only for management and operation of a Government-owned plant, paragraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include paragraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially.]

32.411 Agreement for special account at a financial institution.

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

AGREEMENT FOR SPECIAL ACCOUNT

This agreement is entered into this ____ day of _____, 20____, between the United States of America (the Government), represented by the Contracting Officer executing this agreement, _____ [Insert the name of the Contractor], a _____ [Insert the name of the State of incorporation] corporation (the Contractor), and _____, a financial institution operating under the laws of _____, located at _____ (the financial institution).

RECITALS

(a) Under date of _____, 20____, the Government and the Contractor entered into Contract No. _____, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor’s general or other funds, in a Special Account at a member bank of the Federal Reserve System, any

“insured” bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The parties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated “_____ [Insert the Contractor’s name], _____ [Insert the name of the Government agency] Special Account.”

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on _____ [Insert the name of the agency] stationery and purporting to be signed by, or by the direction of _____ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the _____ [Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceed-

ings regarding the Special Account, the financial institution will promptly notify _____ [Insert the name of the administering office].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution’s published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]

Each of the parties to this agreement has executed the agreement on _____, 20____.

[Signatures and Official Titles]

32.412 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-12, Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in 32.412(b).

(b) If the agency desires to waive the countersignature requirement because of the contractor’s financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special account is eliminated in accordance with 32.409-3(e) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of 52.232-12, Advance Payments, instead of the basic clause.

**Subpart 32.5—Progress Payments Based on
Costs [Reserved]**

Subpart 32.6—Contract Debts

32.600 Scope of subpart.

This subpart prescribes policies and procedures for the Government's actions in ascertaining and collecting contract debts, charging interest on the debts, deferring collections, and compromising and terminating certain debts.

32.601 Definition.

"Responsible official," as used in this subpart, means the contracting officer (see Subpart 2.1) or other official designated under agency procedures to administer the collection of contract debts and applicable interest.

32.602 General.

The contract debts covered in this subpart arise in various ways. The following are some examples:

- (a) Damages or excess costs related to defaults in performance.
- (b) Breach of contract obligations concerning progress payments, advance payments, or Government-furnished property or material.
- (c) Government expense of correcting defects.
- (d) Overpayments related to errors in quantity or billing or deficiencies in quality.
- (e) Retroactive price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.
- (f) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.
- (g) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.
- (h) Reimbursement of costs, as provided in 33.102(b) and 33.104(h)(1), paid by the Government where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

32.603 Applicability.

Except as otherwise specified, this subpart applies to all debts to the Government arising in connection with contracts and subcontracts for the acquisition of supplies or services, and debts arising from the Government's payment of costs, as provided in 33.102(b) and 33.104(h)(1), where a postaward protest is sustained as a result of an awardee's misstatement, misrepresentation, or miscertification.

32.604 Exclusions.

This subpart does not apply to claims of the Government against military or civilian employees or their dependents arising in connection with current or past employment by the Government. Sections 32.613, 32.614, and 32.616 do not

apply to claims against common carriers for transportation overcharges and freight and cargo losses.

32.605 Responsibilities and cooperation among Government officials.

(a) To protect the Government's interests, contracting officers, contract financing offices, disbursing officials, and auditors shall cooperate fully with each other to—

- (1) Discover promptly when a contract debt arises;
- (2) Ascertain the correct amount of the debt;
- (3) Act promptly and effectively to collect the debt;
- (4) Administer deferment of collection agreements;

and

(5) Provide up-to-date information on the status of the debt.

(b) For most kinds of contract debts, including reimbursement of protest costs, the contracting officer has the primary responsibility for determining the amounts of and collecting contract debt. Under some agency procedures, however, the individual who is responsible for payment under the contract; *e.g.*, the disbursing officer, may have this primary responsibility.

32.606 Debt determination and collection.

(a) If any indication of a contract debt arises, the responsible official shall determine promptly whether an actual debt is due the Government and the amount. Any unwarranted delay may contribute to—

- (1) Loss of timely availability of the funds to the program for which the funds were initially provided;
- (2) Increased difficulty in collecting the debt; or
- (3) Actual monetary loss to the Government.

(b) In determining the amount of any contract debt, the responsible official shall fairly consider both the Government's claim and any contract claims by the contractor against the Government. This determination does not constitute a settlement of such claims, nor is it a contracting officer's final determination under the Contract Disputes Act of 1978.

(c) The responsible official shall establish a control record for each contract debt, to include at least the following information:

- (1) The name and address of the contractor.
- (2) The contract number, if any.
- (3) A description of the debt.
- (4) The amount of debt and the appropriation to be credited.
- (5) The date the debt was determined.
- (6) The dates of demands for payment.
- (7) The amounts and dates of collections, as they occur.
- (8) The date of any appeal filed or action brought in the Court of Claims under the Disputes clause.

(9) The status of collections. Examples include—

- (i) Actions reported to the disbursing officer (name, location, and date);
- (ii) Funds requested to be withheld by the disbursing officer;
- (iii) Funds requested to be withheld by other offices (date and office);
- (iv) Deferment or installment payment arrangement requested;
- (v) Deferment or installment request reviewed;
- (vi) Supplemental information requested to support deferment requests; and
- (vii) Actions transferred to the contract financing office.

(d) Except in cases in which an agreement has been entered into for deferment of collections (32.613) or bankruptcy proceedings against the contractor have been initiated, the contractor shall be required to liquidate the debt by—

- (1) Cash payment in a lump sum, on demand; or
- (2) Credit against existing unpaid bills due the contractor.

(e) The responsible officials shall use all proper means available to them for collecting debts as rapidly as possible. Practices for ascertaining and collecting debts shall be comprehensive, dynamic, and as uniform as practicable. Full consideration shall be given to personal contact and followup.

32.607 Tax credit.

(a) If the contractor is entitled to a tax credit under section 1481 of the Internal Revenue Code (26 U.S.C. 1481) and requests recognition of the credit in the debt collection, the responsible official shall comply.

(b) The tax credit shall be considered to reduce the amount of the debt as of the date when interest on the debt begins to accrue.

(c) The amount of the debt reduction shall be the amount of the tax credit certificate, if a certificate was issued by the Internal Revenue Service (IRS). If the IRS has not yet issued a certificate, the responsible official may accept the contractor's estimate of the tax credit amount until the certificate is issued, subject to any verification that the responsible official considers appropriate.

(d) A reduction for a tax credit does not apply to a debt arising from a subcontract.

32.608 Negotiation of contract debts.

(a) The responsible official shall ensure that any negotiations concerning debt determinations are completed expeditiously. If consistent with the contract, the official shall make a unilateral determination promptly if the contractor is delinquent in any of the following actions:

- (1) Furnishing pertinent information.
 - (2) Negotiating expeditiously.
 - (3) Entering into an agreement on a fair and reasonable price revision.
 - (4) Signing an interim memorandum evidencing a negotiated pricing agreement involving refund.
 - (5) Executing an appropriate contract modification reflecting the result of negotiations.
- (b) The amount of indebtedness determined unilaterally shall be an amount that—
- (1) Is proper based on the merits of the case;
 - (2) Does not exceed an amount that would have been considered acceptable in a negotiated agreement; and
 - (3) Is consistent with the contract terms.
- (c) For unilateral debt determinations, the contracting officer shall issue a decision as required by the clause at 52.233-1, Disputes. Such decision shall include a demand for payment (see 33.211(a)(4)(vi)). No demand for payment under 32.610 shall be issued prior to a contracting officer's final decision. A copy of the final decision shall be sent to the appropriate finance office.

32.609 Memorandum of pricing agreement with refund.

(a) If a refund to the Government is agreed upon in negotiations under a price revision type of contract, the responsible official shall promptly write a memorandum to document the agreement and the contract debt. The memorandum shall be signed by the negotiators for the Government and the contractor. If the procedures of either the agency or the contractor require approval of the negotiation results by higher authority, the memorandum shall be written without prejudice to the final pricing. After negotiations are completed, a supplemental agreement shall be executed without delay.

(b) The amount of refund shall be computed promptly, without waiting for itemization of adjustment of past billings, accounting adjustments, or the adjusted invoices.

32.610 Demand for payment of contract debt.

(a) A demand for payment shall be made as soon as the responsible official has computed the amount of refund due. If the debt arises from excess costs for a default termination, the demand shall be made without delay, as explained in 49.402-6.

(b) The demand shall include the following:

- (1) A description of the debt, including the debt amount.
- (2) Notification that any amounts not paid within 30 days from the date of the demand will bear interest from the date of the demand, or from any earlier date specified in the contract, and that the interest rate shall be the rate established by the Secretary of the Treasury, for the period affected, under Public Law 92-41. In the case of a debt arising from a price reduction for defective pricing, or as specif-

ically set forth in a Cost Accounting Standards (CAS) clause in the contract, that interest will run from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under 26 U.S.C. 6621(a)(2).

(3) A notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed.

(4) Identification of the responsible official designated for determining the amount of the debt and for its collection.

(c) If paragraph (b)(3) of the clause at 52.232-17, Interest, applies, the demand mentioned in paragraph (a) of this section shall accompany or be included in the transmittal mentioned in the clause.

32.611 Routine setoff.

If a disbursing officer is the responsible official for collection of a contract debt, or is notified of the debt by the responsible official and has contractor invoices on hand for payment, the disbursing officer shall make an appropriate setoff. The disbursing officer shall give the contractor an explanation of the setoff. To the extent that the setoff reduces the debt, the explanation shall replace the demand prescribed in 32.610.

32.612 Withholding and setoff.

During the 30 days following the issuance of a demand, the advisability of withholding payments otherwise due to the contractor shall be considered based on the circumstances of the individual cases. If payment is not completed within 30 days, and deferment is not requested, withholding of principal and interest shall be initiated immediately. In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For additional information on assignment of claims, see Subpart 32.8.

32.613 Deferment of collection.

(a) If the responsible official receives a written request from the contractor for a deferment of the debt collection or installment payments, the official shall promptly review the request to see if the information included is adequate for action on the request. If not, the contractor shall be asked to furnish the needed information. Any necessary changes to the terms of the proposed deferment/installment agreement shall also be suggested.

(b) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.

(c) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

(1) Financial condition.

(2) Contract backlog.

(3) Projected cash receipts and requirements.

(4) The feasibility of immediate payment of the debt.

(5) The probable effect on operations of immediate payment in full.

(d) Although the existence of a contractor appeal of the debt does not of itself require the Government to suspend or delay collection action, the responsible official shall consider whether deferment of the debt collection is advisable to avoid possible overcollection. The responsible official may authorize a deferment pending the resolution of appeal.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, with a reasonable balance of the need for Government security against loss and undue hardship on the contractor.

(f) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract, the responsible official may arrange for deferment/installment payments if the contractor is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and securities and should be limited to the shortest practicable maturity.

(g) Contracts and arrangements for deferment may not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of a dispute, until the decision is reached.

(h) At a minimum, the deferment agreement shall contain the following:

(1) A description of the debt.

(2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with MMAR 32.614 and the clause at MMAR 52.232-17, Interest; or, in the case of a debt arising from a defective pricing or a CAS noncompliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Cost or Pricing Data or CAS clause.

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at 32.409 and 32.501-5 may be used as a guide.

(i) If a contractor appeal of the debt determination is pending, the deferment agreement shall also include a requirement that the contractor shall—

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(j) If the contractor does not plan to appeal the debt or file an action under the Disputes clause of the contract, the deferment/installment agreement shall include a specific schedule or plan for payment. It should permit the Government to make periodic financial reviews of the contractor and to require prepayments if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable prepayments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(k) If desired by the contractor, the deferment agreement may provide for the right to make prepayments without prejudice, for refund of overpayments, and for crediting of interest (see 32.614-2).

(l) Actions filed by contractors under the Disputes clause shall not suspend or delay collection. Until the action is decided, deferments shall only be granted if, within 30 days after the filing of such action, the contractor presents to the responsible official a good and sufficient bond, or other collateral acceptable to the responsible official, in the amount of the claim, and approved by the responsible official. Any amount collected by the Government in excess of the amount found to be due on appeal under the Disputes clause of the contract shall be refunded to the contractor with interest thereon from the date of collection by the Government at the annual rate established by the Secretary of Treasury under Public Law 92-41. Simple interest shall be calculated through the period of indebtedness to reflect each 6-month period change in the rates established by the Secretary.

32.614 Interest.

32.614-1 Interest charges.

(a) Under the clause at 52.232-17, Interest, the responsible official shall apply interest charges to any contract debt unpaid after 30 days from the issuance of a demand, unless—

(1) The contract specifies another due date or procedure for charging or collecting interest;

(2) The contract is a kind excluded under 32.617; or

(3) The contract or debt has been exempted from interest charges under agency procedures.

(b) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into on deferment of collection.

(c) Unless specified otherwise in the clause at MMAR 52.232-17, the interest charge shall be at the rate established by the Secretary of the Treasury under Public Law 92-41 for the period in which the amount becomes due. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the contractor;

(2) The date of issuance of a Government check to the contractor from which an amount otherwise payable has been withheld as a credit against the contract debt;

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the contractor; or

(4) The date of any applicable tax credit under 32.607.

32.614-2 Interest credits.

(a) An equitable interest credit shall be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; *e.g.*, through a successful appeal.

(2) When the collection procedures followed in a given case result in an overcollection of the debt due.

(3) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an interest penalty was not paid for such late payment.

(b) Any appropriate interest credits shall be computed under the following procedures:

(1) Interest at the rate under 32.614-1(c) shall be charged on the reduced debt from the date specified in the first demand made for payment of the higher debt.

(2) Interest may not be reduced for any time between the due date under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; *e.g.*, the clause prescribed in 32.617.

(3) Interest shall not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount that has been collected, or withheld for the purpose of collecting the debt. This limitation shall be further reduced by the amount of any limitation applicable under 32.614-2(b)(2).

32.615 Delays in receipt of notices or demands.

If delivery of the demands or notices required by the clause at 52.232-17, Interest, is delayed by the Government (*e.g.*, undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of inter-

est shall be extended to a time that is fair and reasonable under the particular circumstances.

32.616 Compromise actions.

For debts under \$100,000, excluding interest, if further collection is not practicable or would cost more than the amount of recovery, the agency may compromise the debt or terminate or suspend further collection action. Compromise is authorized by the Federal Claims Collection Act of 1966 (31 U.S.C. 3711). Compromise actions shall conform to Federal claims collection standards (4 CFR 101-105), and agency regulations.

32.617 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories:

(1) Contracts at or below the simplified acquisition threshold.

(2) Contracts with Government agencies.

(3) Contracts with a State or local government or instrumentality.

(4) Contracts with a foreign government or instrumentality.

(5) Contracts without any provision for profit or fee with a nonprofit organization.

(6) Contracts described in Subpart 5.5, Paid Advertisements.

(7) Any other exceptions authorized under agency procedures.

(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).

Subpart 32.7—Contract Funding

32.700 Scope of subpart.

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed acquisition funding requirements are contained in agency fiscal regulations.

32.701 [Reserved]

32.702 Policy.

No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall—

(a) Obtain written assurance from responsible fiscal authority that adequate funds are available or

(b) Expressly condition the contract upon availability of funds in accordance with 32.703-2.

32.703 Contract funding requirements.

32.703-1 General.

(a) If the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

(b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

32.703-2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes the clause at 52.232-18, Availability of Funds (see 32.705-1(a)). This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds)—

(1) Necessary for normal operations and

(2) For which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided, that—

(1) Any specified minimum quantities are certain to be ordered in the initial fiscal year (see 37.106) and

(2) The contract includes the clause at 52.232-19, Availability of Funds for the Next Fiscal Year (see 32.705-1(b)).

(c) *Acceptance of supplies or services.* The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

32.703-3 Contracts crossing fiscal years.

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., 41 U.S.C. 11a, 31 U.S.C. 1308, 42 U.S.C. 2459a, 42 U.S.C. 3515, and paragraph (b) of this subsection), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

32.704 Limitation of cost or funds.

(a)(1) When a contract contains the clause at 52.232-20, Limitation of Cost; 52.232-21, Limitation of Cost (Facilities); or 52.232-22, Limitation of Funds, the contracting officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain funding and programming information pertinent to the contract's continuation and notify the contractor in writing that—

(i) Additional funds have been allotted, or the estimated cost has been increased, in a specified amount;

(ii) The contract is not to be further funded and that the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;

(iii) The contract is to be terminated; or

(iv)(A) The Government is considering whether to allot additional funds or increase the estimated cost—

(B) The contractor is entitled by the contract terms to stop work when the funding or cost limit is reached; and

(C) Any work beyond the funding or cost limit will be at the contractor's risk.

(2) Upon learning that a partially funded contract containing any of the clauses referenced in paragraph (a)(1) of this section will receive no further funds, the contracting officer shall promptly give the contractor written notice of the decision not to provide funds.

(b) Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer shall ensure availability of funds for directed actions. The con-

tracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 (31 U.S.C. 1341) that may subject the violator to civil or criminal penalties.

32.705 Contract clauses.

32.705-1 Clauses for contracting in advance of funds.

(a) Insert the clause at 52.232-18, Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

(b) The contracting officer shall insert the clause at 52.232-19, Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract—

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see 32.703-2(b)).

32.705-2 Clauses for limitation of cost or funds.

(a) The contracting officer shall insert the clause at 52.232-20, Limitation of Cost, in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee.

(b) The contracting officer shall insert the clause at 52.232-21, Limitation of Cost (Facilities), in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301).

(c) The contracting officer shall insert the clause at 52.232-22, Limitation of Funds, in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated.

Subpart 32.8—Assignment of Claims

32.800 Scope of subpart.

This subpart prescribes policies and procedures for the assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as “the Act”).

32.801 Definitions.

“No-setoff commitment,” as used in this subpart, means a contractual undertaking that, to the extent permitted by the Act, payments by the agency to the assignee under an assignment of claims will not be reduced to liquidate the indebtedness of the contractor to the Government.

32.802 Conditions.

Under the Assignment of Claims Act, a contractor may assign moneys due or to become due under a contract if all the following conditions are met:

- (a) The contract specifies payments aggregating \$1,000 or more.
- (b) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
- (c) The contract does not prohibit the assignment.
- (d) Unless otherwise expressly permitted in the contract, the assignment—
 - (1) Covers all unpaid amounts payable under the contract;
 - (2) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and
 - (3) Is not subject to further assignment.
- (e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the—
 - (1) Contracting officer or the agency head;
 - (2) Surety on any bond applicable to the contract; and
 - (3) Disbursing officer designated in the contract to make payment.

32.803 Policies.

- (a) Any assignment of claims that has been made under the Act to any type of financing institution listed in 32.802(b) may thereafter be further assigned and reassigned to any such institution if the conditions in 32.802(d) and (e) continue to be met.
- (b) A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the Government’s interest.
- (c) Under a requirements or indefinite quantity type contract that authorizes ordering and payment by multiple Gov-

ernment activities, amounts due for individual orders for \$1,000 or more may be assigned.

(d) When an assigned contract does not include a no-setoff commitment, the Government may apply against payments to the assignee any liability of the contractor to the Government arising independently of the assigned contract if the liability existed at the time notice of the assignment was received even though that liability had not yet matured so as to be due and payable.

32.804 Extent of assignee’s protection.

(a) No payments made by the Government to the assignee under any contract assigned in accordance with the Act may be recovered on account of any liability of the contractor to the Government. This immunity of the assignee is effective whether the contractor’s liability arises from or independently of the assigned contract.

(b) Except as provided in paragraph (c) of this section, the inclusion of a no-setoff commitment in an assigned contract entitles the assignee to receive contract payments free of reduction or setoff for—

- (1) Any liability of the contractor to the Government arising independently of the contract; and
- (2) Any of the following liabilities of the contractor to the Government arising from the assigned contract:
 - (i) Renegotiation under any statute or contract clause.
 - (ii) Fines.
 - (iii) Penalties, exclusive of amounts that may be collected or withheld from the contractor under, or for failure to comply with, the terms of the contract.
 - (iv) Taxes or social security contributions.
 - (v) Withholding or nonwithholding of taxes or social security contributions.

(c) In some circumstances, a setoff may be appropriate even though the assigned contract includes a no-setoff commitment; *e.g.*—

- (1) When the assignee has neither made a loan under the assignment nor made a commitment to do so; or
- (2) To the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment for financing.

32.805 Procedure.

- (a) *Assignments.* (1) Assignments by corporations shall be—
- (i) Executed by an authorized representative;
 - (ii) Attested by the secretary or the assistant secretary of the corporation; and
 - (iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation’s board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

(b) *Filing.* The assignee shall forward to each party specified in 32.802(e) an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

NOTICE OF ASSIGNMENT

To: _____ [Address to one of the parties specified in 32.802(e)].

This has reference to Contract No. _____ dated _____, entered into between _____ [Contractor's name and address] and _____ [Government agency, name of office, and address], for _____ [Describe nature of the contract].

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

A true copy of the instrument of assignment executed by the Contractor on _____ [Date], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

[Name of Assignee]

By _____
[Signature of Signing Officer]

[Title of Signing Officer]

[ADDRESS OF ASSIGNEE]

ACKNOWLEDGEMENT

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received ____ (a.m.) (p.m.) on _____, 20____.

[Signature]

[Title]

On behalf of

[Name of Addressee of this Notice]

(d) *Examination by the Government.* In examining and processing notices of assignment and before acknowledging their receipt, contracting officers should assure that the following conditions and any additional conditions specified in agency regulations, have been met:

- (1) The contract has been properly approved and executed.
- (2) The contract is one under which claims may be assigned.
- (3) The assignment covers only money due or to become due under the contract.

(e) *Release of assignment.* (1) A release of an assignment is required whenever—

- (i) There has been a further assignment or reassignment under the Act; or
- (ii) The contractor wishes to reestablish its right to receive further payments after the contractor's obligations to the assignee have been satisfied and a balance remains due under the contract.

(2) The assignee, under a further assignment or reassignment, in order to establish a right to receive payment from the Government, must file with the addressees listed in 32.802(e) a—

- (i) Written notice of release of the contractor by the assigning financing institution;
- (ii) Copy of the release instrument;
- (iii) Written notice of the further assignment or reassignment; and
- (iv) Copy of the further assignment or reassignment instrument.

(3) If the assignee releases the contractor from an assignment of claims under a contract, the contractor, in order to establish a right to receive payment of the balance due under the contract, must file a written notice of release together with a true copy of the release of assignment instrument with the addressees noted in 32.802(e).

(4) The addressee of a notice of release of assignment or the official acting on behalf of that addressee shall acknowledge receipt of the notice.

32.806 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.232-23, Assignment of Claims, in solicitations and contracts expected to exceed the micro-purchase threshold, unless the contract will prohibit the assignment of claims (see 32.803(b)). The use of the clause is not required for purchase orders. However, the clause may be used in purchase orders expected to exceed the micro-purchase threshold, that are accepted in writing by the contractor, if such use is consistent with agency policies and regulations.

(2) If a no-setoff commitment has been authorized (see 32.803(d)), the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.232-24, Prohibition of Assignment of Claims, in solicitations and contracts for which a determination has been made under agency regulations that the prohibition of assignment of claims is in the Government's interest.

Subpart 32.9—Prompt Payment

32.900 Scope of subpart.

This subpart prescribes policies, procedures, and clauses for making prompt payments.

32.901 Applicability.

(a) This subpart applies to invoice payments on all contracts, except contracts with payment terms and late payment penalties established by other governmental authority (*e.g.*, tariffs).

(b) This subpart does not apply to contract financing payments (see definition at 32.001).

32.902 Definitions.

As used in this subpart—

“Discount for prompt payment” means an invoice payment reduction offered by the contractor for payment prior to the due date.

“Mixed invoice” means an invoice that contains items with different payment due dates.

“Payment date” means the date on which a check for payment is dated or, for an electronic funds transfer (EFT), the settlement date.

“Settlement date,” as it applies to electronic funds transfer, means the date on which an electronic funds transfer payment is credited to the contractor’s financial institution.

32.903 Responsibilities.

(a) Public Printer—

(1) Must establish the policies and procedures necessary to implement this subpart;

(2) May prescribe additional standards for establishing invoice payment due dates (see 32.904) necessary to support agency programs and foster prompt payment to contractors;

(3) May adopt different payment procedures in order to accommodate unique circumstances, provided that such procedures are consistent with the policies in this subpart;

(4) Must inform contractors of points of contact within their cognizant payment offices to enable contractors to obtain status of invoices.

(b) When drafting solicitations and contracts, contracting officers must identify for each contract line item number, subtitle item number, or exhibit line item number—

(1) The applicable Prompt Payment clauses that apply to each item when the solicitation or contract contains items that will be subject to different payment terms; and

(2) The applicable Prompt Payment food category (*e.g.*, which item numbers are meat or meat food products, which are perishable agricultural commodities), when the solicitation or contract contains multiple payment terms for various classes of foods and edible products.

32.904 Determining payment due dates.

(a) *General.* MMS procedures must ensure that, when specifying due dates, contracting officers give full consideration to the time reasonably required by Government officials to fulfill their administrative responsibilities under the contract.

(b) *Payment due dates.* Except as prescribed in paragraphs (c) through (f) of this section, or as authorized in 32.908(a)(2) or (c)(2), the due date for making an invoice payment is as follows:

(1) The later of the following two events:

(i) The 30th day after the designated billing office receives a proper invoice from the contractor (except as provided in paragraph (b)(3) of this section).

(ii) The 30th day after Government acceptance of supplies delivered or services performed.

(A) For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(B) For the sole purpose of computing an interest penalty that might be due the contractor—

(1) Government acceptance is deemed to occur constructively on the 7th day after the contractor delivers supplies or performs services in accordance with the terms and conditions of the contract, unless there is a disagreement over quantity, quality, or contractor compliance with a contract requirement;

(2) If actual acceptance occurs within the constructive acceptance period, the Government must base the determination of an interest penalty on the actual date of acceptance;

(3) The constructive acceptance requirement does not compel Government officials to accept supplies or services, perform contract administration functions, or make payment prior to fulfilling their responsibilities; and

(4) Except for a contract for the purchase of a commercial item, including a brand-name commercial item for authorized resale (*e.g.*, commissary items), the contracting officer may specify a longer period for constructive acceptance in the solicitation and resulting contract, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contracting officer must document in the contract file the justification for extending the constructive acceptance period beyond 7 days. Extended acceptance periods must not be a routine agency practice and must be used only when necessary to permit proper Government inspection and testing of the supplies delivered or services performed.

(2) If the contract does not require submission of an invoice for payment (*e.g.*, periodic lease payments), the contracting officer must specify the due date in the contract.

(3) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(c) *Architect-engineer contracts.* (1) The due date for making payments on contracts that contain the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, is as follows:

(i) The due date for work or services completed by the contractor is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the contractor.

(B) The 30th day after Government acceptance of the work or services completed by the contractor.

(1) For a final invoice, when the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance is deemed to occur on the effective date of the settlement.

(2) For the sole purpose of computing an interest penalty that might be due the contractor, Government acceptance is deemed to occur constructively on the 7th day after the contractor completes the work or services in accordance with the terms and conditions of the contract (see also paragraph (c)(2) of this section). If actual acceptance occurs within the constructive acceptance period, the Government must base the determination of an interest penalty on the actual date of acceptance.

(ii) The due date for progress payments is the 30th day after Government approval of contractor estimates of work or services accomplished. For the sole purpose of computing an interest penalty that might be due the contractor—

(A) Government approval is deemed to occur constructively on the 7th day after the designated billing office receives the contractor estimates (see also paragraph (c)(2) of this section).

(B) If actual approval occurs within the constructive approval period, the Government must base the determination of an interest penalty on the actual date of approval.

(iii) If the designated billing office fails to annotate the invoice or payment request with the actual date of receipt at the time of receipt, the payment due date is the 30th day after the date of the contractor's invoice or payment request, provided the designated billing office receives a proper invoice or payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) The constructive acceptance and constructive approval requirements described in paragraphs (c)(1)(i) and (ii) of this section are conditioned upon receipt of a proper payment request and no disagreement over quantity, quality, contractor compliance with contract requirements, or the requested progress payment amount. These requirements do not compel Government officials to accept work or services, approve contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities. The contracting officer may specify a longer period for constructive acceptance or constructive approval, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed. The contracting officer must document in the contract file the justification for extending the constructive acceptance or approval period beyond 7 days.

(d) *Construction contracts.* (1) The due date for making payments on construction contracts is as follows:

(i) The due date for making progress payments based on contracting officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project, is 14 days after the designated billing office receives a proper payment request.

(A) If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(B) The contracting officer may specify a longer period in the solicitation and resulting contract if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the contractor's performance under the contract. The contracting officer must document in the contract file the justification for extending the due date beyond 14 days.

(C) The contracting officer must not approve progress payment requests unless the certification and substantiation of amounts requested are provided as required by the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts.

(ii) The due date for payment of any amounts retained by the contracting officer in accordance with the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, will be as specified in the contract or, if not specified, 30 days after approval by the contracting officer for release to the contractor. The contracting officer must base the release of retained amounts on the contracting officer's determination that satisfactory progress has been made.

(iii) The due date for final payments based on completion and acceptance of all work (including any retained amounts), and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract) is as follows:

(A) The later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the contractor.

(2) The 30th day after Government acceptance of the work or services completed by the contractor. For a final invoice, when the payment amount is subject to contract settlement actions (*e.g.*, release of contractor claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or contractor compliance with contract requirements.

(2) Construction contracts contain special provisions concerning contractor payments to subcontractors, along with special contractor certification requirements. These certifications must not be construed as final acceptance of the

subcontractor's performance. The certification in 52.232-5(c) implements this determination; however, certificates are still acceptable if the contractor deletes paragraph (c)(4) of 52.232-5 from the certificate.

(3)(i) Paragraph (d) of the clause at 52.232-5, Payments under Fixed-Price Construction Contracts, and paragraph (e)(6) of the clause at 52.232-27, Prompt Payment for Construction Contracts, provide for the contractor to pay interest on unearned amounts in certain circumstances. The Government must recover this interest from subsequent payments to the contractor. Therefore, contracting officers normally must make no demand for payment. Contracting officers must—

(A) Compute the amount in accordance with the clause;

(B) Provide the contractor with a final decision; and

(C) Notify the payment office of the amount to be withheld.

(ii) The payment office is responsible for making the deduction of interest. Amounts collected in accordance with these provisions revert to the United States Treasury.

(e) *Cost-reimbursement contracts for services.* For purposes of computing late payment interest penalties that may apply, the due date for making interim payments on cost-reimbursement contracts for services is 30 days after the date of receipt of a proper invoice.

FAC 2001-02 FEBRUARY 19, 2002

32.905

MATERIALS MANAGEMENT ACQUISITION REGULATION

(f) *Food and specified items.*

IF THE ITEMS DELIVERED ARE:	PAYMENT MUST BE MADE AS CLOSE AS POSSIBLE TO, BUT NOT LATER THAN:
(1) <i>Meat or meat food products.</i> As defined in section 2(a)(3) of the Packers and Stockyard Act of 1921 (7 U.S.C. 182(3)), and as further defined in Public Law 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product.	7th day after product delivery.
(2) <i>Fresh or frozen fish.</i> As defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)).	7th day after product delivery.
(3) <i>Perishable agricultural commodities.</i> As defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)).	10th day after product delivery, unless another date is specified in the contract.
(4) <i>Dairy products.</i> As defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products fall within this classification. Nothing in the Act limits this classification to refrigerated products. If questions arise regarding the proper classification of a specific product, the contracting officer must follow prevailing industry practices in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the contractor making the representation.	10th day after a proper invoice has been received.

(g) *Multiple payment due dates.* Contracting officers may encourage, but not require, contractors to submit separate invoices for products with different payment due dates under the same contract or order. When an invoice contains items with different payment due dates (*i.e.*, a mixed invoice), the payment office will, subject to agency policy—

- (1) Pay the entire invoice on the earliest due date; or
- (2) Split invoice payments, making payments by the applicable due dates.

32.905 Payment documentation and process.

(a) *General.* Payment will be based on receipt of a proper invoice and satisfactory contract performance.

(b) *Content of invoices.* (1) A proper invoice must include the following items (except for interim payments on cost reimbursement contracts for services):

- (i) Name and address of the contractor.
- (ii) Invoice date and invoice number. (Contractors should date invoices as close as possible to the date of mailing or transmission.)
- (iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (*e.g.*, shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) Taxpayer Identification Number (TIN). The contractor must include its TIN on the invoice only if required by agency procedures. (See 4.9 TIN requirements.)

(ix) Electronic funds transfer (EFT) banking information.

(A) The contractor must include EFT banking information on the invoice only if required by agency procedures.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the contractor must have submitted correct EFT banking information in accordance with the applicable solicitation provision (*e.g.*, 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (*e.g.*, 52.232-33, Payment by Electronic Funds Transfer-Central Contractor Registration, or 52.232-34, Payment by

Electronic Funds Transfer-Other Than Central Contractor Registration), or applicable agency procedures.

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

(x) Any other information or documentation required by the contract (*e.g.*, evidence of shipment).

(2) An interim payment request under a cost-reimbursement contract for services constitutes a proper invoice for purposes of this subsection if it includes all of the information required by the contract.

(3) If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt (3 days on contracts for meat, meat food products, or fish; 5 days on contracts for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. If such notice is not timely, then the designated billing office must adjust the due date for the purpose of determining an interest penalty, if any.

(c) *Authorization to pay.* All invoice payments, with the exception of interim payments on cost-reimbursement contracts for services, must be supported by a receiving report or other Government documentation authorizing payment (*e.g.*, Government certified voucher). The agency receiving official should forward the receiving report or other Government documentation to the designated payment office by the 5th working day after Government acceptance or approval, unless other arrangements have been made. This period of time does not extend the due dates prescribed in this section. Acceptance should be completed as expeditiously as possible. The receiving report or other Government documentation authorizing payment must, as a minimum, include the following:

(1) Contract number or other authorization for supplies delivered or services performed.

(2) Description of supplies delivered or services performed.

(3) Quantities of supplies received and accepted or services performed, if applicable.

(4) Date supplies delivered or services performed.

(5) Date that the designated Government official—

(i) Accepted the supplies or services; or

(ii) Approved the progress payment request, if the request is being made under the clause at 52.232-5, Payments Under Fixed-Price Construction Contracts, or the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts.

(6) Signature, printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions.

(d) *Billing office.* The designated billing office must immediately annotate each invoice with the actual date it receives the invoice.

(e) *Payment office.* The designated payment office will annotate each invoice and receiving report with the actual date it receives the invoice.

32.906 Making payments.

(a) *General.* The Government will not make invoice payments earlier than 7 days prior to the due dates specified in the contract unless the Public Printer determines—

(1) To make earlier payment on a case-by-case basis; or

(2) That the use of accelerated payment methods are necessary (see 32.903(a)(5)).

(b) *Payment office.* The designated payment office—

(1) Will mail checks on the same day they are dated;

(2) For payments made by EFT, will specify a date on or before the established due date for settlement of the payment at a Federal Reserve Bank;

(3) When the due date falls on a Saturday, Sunday, or legal holiday when Government offices are closed, may make payment on the following working day without incurring a late payment interest penalty.

(4) When it is determined that the designated billing office erroneously rejected a proper invoice and upon resubmission of the invoice, will enter in the payment system the original date the invoice was received by the designated billing office for the purpose of calculating the correct payment due date and any interest penalties that may be due.

(c) *Partial deliveries.* (1) Contracting officers must, where the nature of the work permits, write contract statements of work and pricing arrangements that allow contractors to deliver and receive invoice payments for discrete portions of the work as soon as completed and found acceptable by the Government (see 32.102(d)).

(2) Unless specifically prohibited by the contract, the clause at 52.232-1, Payments, provides that the contractor is entitled to payment for accepted partial deliveries of supplies or partial performance of services that comply with all applicable contract requirements and for which prices can be calculated from the contract terms.

(d) *Contractor identifier.* Each payment or remittance advice will use the contractor invoice number in addition to any Government or contract information in describing any payment made.

(e) *Discounts.* When a discount for prompt payment is taken, the designated payment office will make payment to the contractor as close as possible to, but not later than, the end of the discount period. The discount period is specified by the contractor and is calculated from the date of the contractor's proper invoice. If the contractor has not placed a date on the invoice, the due date is calculated from the date

the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. When the discount date falls on a Saturday, Sunday, or legal holiday when Government offices are closed, the designated payment office may make payment on the following working day and take a discount. Payment terms are specified in the clause at 52.232-8, Discounts for Prompt Payment.

32.907 [Reserved]

32.908 Contract clauses.

(a) Insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts, in solicitations and contracts that contain the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts.

(1) As authorized in 32.904(c)(2), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval, if required to afford the Government a practicable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(b) Insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).

(1) As authorized in 32.904(d)(1)(i)(B), the contracting officer may modify the date in paragraph (a)(1)(i)(A) of the clause to specify a period longer than 14 days if required to afford the Government a reasonable opportunity to adequately inspect the work and to determine the adequacy of the Contractor's performance under the contract.

(2) As authorized in 32.904(d)(2)(iv), the contracting officer may modify the date in paragraph (a)(4)(i) of the clause to specify a period longer than 7 days for constructive acceptance or constructive approval if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or evaluate the services performed.

(c) Insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts, except when the clause at 52.212-4, Contract Terms and Conditions-Commercial Items, applies, or when payment terms and late payment penalties are established by other governmental authority (e.g., tariffs).

(1) As authorized in 32.904(b)(1)(ii)(B)(4), the contracting officer may modify the date in paragraph (a)(5)(i) of the clause to specify a period longer than 7 days for constructive acceptance, if required to afford the Government a reasonable opportunity to inspect and test the supplies furnished or to evaluate the services performed, except in the case of a contract for the purchase of a commercial item, including a brand-name commercial item for authorized resale (e.g., commissary items).

(2) As provided in 32.903, agency policies and procedures may authorize amendment of paragraphs (a)(1)(i) and (ii) of the clause to insert a period shorter than 30 days (but not less than 7 days) for making contract invoice payments.

(3) If the contract is a cost-reimbursement contract for services, use the clause with its Alternate I.

32.909 Contractor inquiries.

(a) Direct questions involving—

(1) Delinquent payments to the designated billing office or designated payment office; and

(2) Disagreements in payment amount or timing to the contracting officer for resolution. The contracting officer must coordinate within appropriate contracting channels and seek the advice of other offices as necessary to resolve disagreements.

Subpart 32.10—Performance-Based Payments**32.1000 Scope of subpart.**

This subpart provides policy and procedures for performance-based payments under noncommercial purchases pursuant to Subpart 32.1. This subpart does not apply to—

- (a) Payments under cost-reimbursement contracts;
- (b) Contracts for architect-engineer services or construction, or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based upon a percentage or stage of completion; or
- (c) Contracts awarded through sealed bid procedures.

32.1001 Policy.

(a) Performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use.

(b) Performance-based payments are contract financing payments that are not payment for accepted items.

(c) Performance-based payments are fully recoverable, in the same manner as progress payments, in the event of default. Except as provided in 32.1003(c), the contracting officer must not use performance-based payments when other forms of contract financing are provided.

(d) For Government accounting purposes, the Government should treat performance-based payments like progress payments based on costs under Subpart 32.5.

(e) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see Subpart 32.9). However, each agency must make these payments in accordance with the agency's policy for prompt payment of contract financing payments.

32.1002 Bases for performance-based payments.

Performance-based payments may be made on any of the following bases—

- (a) Performance measured by objective, quantifiable methods;
- (b) Accomplishment of defined events; or
- (c) Other quantifiable measures of results.

32.1003 Criteria for use.

The contracting officer may use performance-based payments only if the following conditions are met:

- (a) The contracting officer and offeror are able to agree on the performance-based payment terms;
- (b) The contract is a fixed-price type contract; and
- (c) The contract does not provide for other methods of contract financing, except that advance payments in accordance with Subpart 32.4, or guaranteed loans in accordance with Subpart 32.3 may be used.

32.1004 Procedures.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of \$1,000,000 each, has 10 deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of \$10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment must be an integral and necessary part of contract performance and must be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions must not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but the Government must be able to readily verify successful performance of each such event or performance criterion.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The contracting officer must include the following in the contract:

(i) The contract must not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) The contract must specifically identify severable events or criteria.

(iii) The contract must identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria must not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion must be part of the performance necessary for that deliverable item and must be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer must establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification must adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments must—

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see 32.104(a)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The contract must specifically state the amount of each performance-based payment either as a dollar amount or as a percentage of a specifically identified price (*e.g.*, contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that—

(i) The total contract price is fair and reasonable, all factors considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion, and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. To confirm sufficient investment, the contracting officer may request expenditure profile information from offerors, but only if other information in the proposal, or information otherwise available to the contracting officer, is expected to be insufficient.

(4) Unless agency procedures prescribe the bases for establishing performance-based payment amounts, contracting officers may establish them on any rational basis, including (but not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent contract modifications are issued, the contracting officer must adjust the performance-based payment schedule as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer must provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts must be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer must specify the liquidation rate or designated dollar amount in the contract. The method of liquidation must ensure complete liquidation no later than final payment.

(1) If the contracting officer establishes the performance-based payments on a delivery item basis, the liquidation amount for each line item is the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.

(e) *Competitive negotiated solicitations.* (1) If a solicitation requests offerors to propose performance-based payments, the solicitation must specify—

(i) What, if any, terms must be included in all offers; and

(ii) The extent to which and how offeror-proposed performance-based payment terms will be evaluated. Unless agencies prescribe other evaluation procedures, if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer, the solicitation should include an adjustment of proposed prices to reflect the estimated cost to the Government of providing each offeror's proposed performance-based payments (see Alternate I to the provision at 52.232-28).

(2) The contracting officer must—

(i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method in 32.205(c) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

32.1005 Solicitation provision and contract clause.

(a) Insert the clause at 52.232-32, Performance-Based Payments, with the description of the basis for payment and liquidation as required in 32.1004 in—

(1) Solicitations that may result in contracts providing for performance-based payments; and

(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232-28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

32.1006 [Reserved]

32.1007 Administration and payment of performance-based payments.

(a) *Responsibility.* The contracting officer responsible for administration of the contract shall be responsible for review and approval of performance-based payments.

(b) *Approval of financing requests.* Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—

(1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and

(2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.

(c) *Reviews.* The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.

(d) *Incomplete performance.* The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.

(e) *Government-caused delay.* Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based pay-

ment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1008 Suspension or reduction of performance-based payments.

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

32.1009 Title.

(a) Since the clause at 52.232-32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe otherwise, may rely upon the contractor's certification contained in the payment request.

(b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.

(c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

(a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.

(b) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.

(c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In

addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for contract financing and delivery payments to contractors by electronic funds transfer (EFT).

32.1101 Statutory requirements.

31 U.S.C. 3332 requires, subject to implementing regulations of the Secretary of the Treasury at 31 CFR part 208, that EFT be used to make all contract payments.

32.1102 Definitions.

As used in this subpart—

“Electronic Funds Transfer information (EFT)” means information necessary for making a payment by EFT through specified EFT mechanisms.

“Governmentwide commercial purchase card” means a card that is similar in nature to a commercial credit card that is used to make financing and delivery payments for supplies and services. The purchase card is an EFT method and it may be used as a means to meet the requirement to pay by EFT, to the extent that purchase card limits do not preclude such payments.

“Payment information” means the payment advice provided by the Government to the contractor that identifies what the payment is for, any computations or adjustments made by the Government, and any information required by the Prompt Payment Act.

32.1103 Applicability.

The Government shall provide all contract payments through EFT except if—

(a) The office making payment under a contract that requires payment by EFT, loses the ability to release payment by EFT. To the extent authorized by 31 CFR part 208, the payment office shall make necessary payments pursuant to paragraph (a)(2) of the clause at either 52.232-33 or 52.232-34 until such time as it can make EFT payments;

(b) The payment is to be received by or on behalf of the contractor outside the United States and Puerto Rico (but see 32.1106(b));

(c) A contract is paid in other than United States currency (but see 32.1106(b));

(d) Payment by EFT under a classified contract could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations;

(e) A contract is awarded by a deployed contracting officer in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or a contract is awarded by any contracting

officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, if—

(1) EFT is not known to be possible; or

(2) EFT payment would not support the objectives of the operation;

(f) The agency does not expect to make more than one payment to the same recipient within a one-year period;

(g) An agency’s need for supplies and services is of such unusual and compelling urgency that the Government would be seriously injured unless payment is made by a method other than EFT;

(h) There is only one source for supplies and services and the Government would be seriously injured unless payment is made by a method other than EFT; or

(i) Otherwise authorized by Department of the Treasury Regulations at 31 CFR part 208.

32.1104 Protection of EFT information.

The Government shall protect against improper disclosure of contractors’ EFT information.

32.1105 Assignment of claims.

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

32.1106 EFT mechanisms.

(a) *Domestic EFT mechanisms.* The EFT clauses at 52.232-33 and 52.232-34 are designed for use with the domestic United States banking system, using United States currency, and only the specified mechanisms (U.S. Automated Clearing House, and Fedwire Transfer System) of EFT. However, the head of an agency may authorize the use of any other EFT mechanism for domestic EFT with the concurrence of the office or agency responsible for making payments.

(b) *Nondomestic EFT mechanisms and other than United States currency.* The Government shall provide payment by other than EFT for payments received by or on behalf of the contractor outside the United States and Puerto Rico or for contracts paid in other than United States currency. However, the head of an agency may authorize appropriate use of EFT with the concurrence of the office or agency responsible for making payments if—

(1) The political, financial, and communications infrastructure in a foreign country supports payment by EFT; or

(2) Payments of other than United States currency may be made safely.

32.1107 Payment information.

The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System.

32.1108 Payment by Governmentwide commercial purchase card.

A Governmentwide commercial purchase card charge authorizes the third party (*e.g.*, financial institution) that issued the purchase card to make immediate payment to the contractor. The Government reimburses the third party at a later date for the third party's payment to the contractor.

(a) The clause at 52.232-36, Payment by Third Party, governs when a contractor submits a charge against the purchase card for contract payment. The clause provides that the contractor shall make such payment requests by a charge to a Government account with the third party at the time the payment clause(s) of the contract authorizes the contractor to submit a request for payment, and for the amount due in accordance with the terms of the contract. To the extent that such a payment would otherwise be approved, the charge against the purchase card should not be disputed when the charge is reported to the Government by the third party. To the extent that such payment would otherwise not have been approved, an authorized individual (see 1.603-3) shall take action to remove the charge, such as by disputing the charge with the third party or by requesting that the contractor credit the charge back to the Government under the contract.

(b) Written contracts to be paid by purchase card should include the clause at 52.232-36, Payment by Third Party, as prescribed by 32.1110(d). However, payment by a purchase card also may be made under a contract that does not contain the clause to the extent the contractor agrees to accept that method of payment.

(c) The clause at 52.232-36, Payment by Third Party, requires that the contract—

- (1) Identify the third party and the particular purchase card to be used; and
- (2) Not include the purchase card account number. The purchase card account number should be provided separately to the contractor.

32.1109 EFT information submitted by offerors.

If offerors are required to submit EFT information prior to award, the successful offeror is not responsible for resubmitting this information after award of the contract except to make changes, or to place the information on invoices if required by agency procedures. Therefore,

contracting officers shall forward EFT information provided by the successful offeror to the appropriate office.

32.1110 Solicitation provision and contract clauses.

(a) Unless payment will be made exclusively through use of the Governmentwide commercial purchase card or other third party payment arrangement (see 13.301 and paragraph (d) of this section) or an exception listed in 32.1103(a) through (i) applies—

(1) The contracting officer shall insert the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, in all solicitations and contracts if the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information. The contracting officer also shall insert this clause if the payment office does not currently have the ability to make payment by EFT, but will use the CCR database as its source of EFT information when it begins making payments by EFT;

(2)(i) The contracting officer shall insert the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, in all other solicitations and contracts. The contracting officer also shall insert this clause if the payment office currently does not have the ability to make payment by EFT, but will use a source other than the CCR database for EFT information when it begins making payments by EFT.

(ii)(A) If permitted by agency procedures, the contracting officer may insert in paragraph (b)(1) of the clause, a particular time after award, such as a fixed number of days, or event such as the submission of the first request for payment.

(B) If no agency procedures are prescribed, the time period inserted in paragraph (b)(1) of the clause shall be “no later than 15 days prior to submission of the first request for payment.”

(b) If the head of the agency has authorized, in accordance with 32.1106, to use a nondomestic EFT mechanism, the contracting officer shall insert in solicitations and contracts a clause substantially the same as 52.232-33 or 52.232-34 that clearly addresses the nondomestic EFT mechanism.

(c) If EFT information is to be submitted to other than the payment office in accordance with agency procedures, the contracting officer shall insert in solicitations and contracts the clause at 52.232-35, Designation of Office for Government Receipt of Electronic Funds Transfer Information, or a clause substantially the same as 52.232-35 that clearly informs the contractor where to send the EFT information.

(d) If payment under a written contract will be made by a charge to a Government account with a third party such as a Governmentwide commercial purchase card, then the contracting officer shall insert the clause at 52.232-36, Payment by Third Party, in solicitations and contracts. Payment by a

purchase card may also be made under a contract that does not contain the clause at 52.232-36, to the extent the contractor agrees to accept that method of payment.

(e) If the contract or agreement provides for the use of delivery orders, and provides that the ordering office designate the method of payment for individual orders, the contracting officer shall insert, in the solicitation and contract or agreement, the clause at 52.232-37, Multiple Payment Arrangements, and, to the extent they are applicable, the clauses at—

- (1) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration;
- (2) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration; and
- (3) 52.232-36, Payment by Third Party.

(f) If more than one disbursing office will make payment under a contract or agreement, the contracting officer, or ordering office (if the contract provides for choices between EFT clauses on individual orders or classes of orders), shall

include or identify the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

(g) If the solicitation contains the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, and an offeror is required to submit EFT information prior to award—

(1) The contracting officer shall insert in the solicitation the provision at 52.232-38, Submission of Electronic Funds Transfer Information with Offer, or a provision substantially the same; and

(2) For sealed bid solicitations, the contracting officer shall amend 52.232-38 to ensure that a bidder’s EFT information—

(i) Is not a part of the bid to be opened at the public opening; and

(ii) May not be released to members of the general public who request a copy of the bid.

* * * * *

PART 33—PROTESTS, DISPUTES, AND APPEALS

Sec.

33.000	Scope of part.	33.204	Policy.
	Subpart 33.1—Protests	33.205	Relationship of the Act to Public Law 85-804.
33.101	Definitions.	33.206	Initiation of a claim.
33.102	General.	33.207	Contractor certification.
33.103	Protests to the agency.	33.208	[Reserved]
33.104	Protests to GAO.	33.209	Suspected fraudulent claims.
33.105	[Reserved]	33.210	Contracting officer's authority.
33.106	Solicitation provision and contract clause.	33.211	Contracting officer's decision.
	Subpart 33.2—Disputes and Appeals	33.212	Contracting officer's duties upon appeal.
33.201	Definitions.	33.213	Obligation to continue performance.
33.202	GPOBCA Procedures.	33.214	Alternative dispute resolution (ADR).
33.203	Applicability.	33.215	Contract clause.

This page intentionally left blank.

33.000 Scope of part.

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

Subpart 33.1—Protests**33.101 Definitions.**

As used in this subpart—

“Day” means a calendar day, unless otherwise specified. In the computation of any period—

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included unless—

(i) The last day is a Saturday, Sunday, or Federal holiday; or

(ii) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

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

“Interested party for the purpose of filing a protest” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest” means a written objection by an interested party to any of the following:

(1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(2) The cancellation of the solicitation or other request.

(3) An award or proposed award of the contract.

(4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

33.102 General.

(a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO).

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and

(2) Pay appropriate costs as stated in 33.104(h).

(3) Require the awardee to reimburse the Government’s costs, as provided in this paragraph, where a post-award protest is sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee’s negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee’s actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee’s fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.

(c) In accordance with 31 U.S.C. 1558, with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in paragraph 33.104(c)(1) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR part 21).

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 423(g)).

33.103 Protests to the agency.

(a) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(b) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(c) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent

review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

(d) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(e) *Action upon receipt of protest.* (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(f) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.

(g) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

33.104 Protests to GAO.

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

(a) *General procedure.* (1) A protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.

(2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known. However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.

(3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 30 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—

(A) Advises the agency that the protest has been dismissed; or

(B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.

(ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—

(A) The protest;

(B) The offer submitted by the protester;

(C) The offer being considered for award or being protested;

(D) All relevant evaluation documents;

(E) The solicitation, including the specifications or portions relevant to the protest;

(F) The abstract of offers or relevant portions; and

(G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.

(iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.

(iv) The agency report to the GAO shall include—

(A) A copy of the documents described in 33.104(a)(3)(ii);

(B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest; and

(C) A list of parties being provided the documents.

(4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protester and any intervenors. A party shall receive all relevant documents, except—

(A) Those that the agency has decided to withhold from that party for any reason, including those covered

by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and

(B) Protester's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.

(ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 2 days of receipt of the request.

(B) The additional documents shall also be provided to the protester and other interested parties within this 2-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this section). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order.

(C) The agency shall notify the GAO of any documents withheld from the protester and other interested parties and shall state the reasons for withholding them.

(5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.

(i) *Requests for protective orders.* Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.

(ii) *Exclusions and rebuttals.* Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.

(iii) *Additional documents.* If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.

(iv) *Sanctions and remedies.* The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.

(6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 days, or 5 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 5 days after the hearing.

(7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

(b) Protests before award. (1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—

(i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and

(ii) Award is likely to occur within 30 days of the written finding.

(2) A contract award shall not be authorized until the agency has notified the GAO of the finding in paragraph (b)(1) of this section.

(3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under paragraph (b)(1) of this section.

(c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.

(2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in paragraph (c)(2) of this section.

(4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(5) When the agency receives notice of a protest filed with the GAO after the dates contained in paragraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

(d) *Findings and notice.* If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protester and other interested parties.

(e) *Hearings.* The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and the agency report within 5 days of the hearing.

(f) *GAO decision time.* GAO issues its recommendation on a protest within 100 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.

(g) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

(h) *Award of costs.* (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.

(2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

(3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.

(4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.

(5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—

(i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or

(ii) For attorneys' fees that exceed \$150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee to reimburse the Gov-

ernment the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

33.105 [Reserved]**33.106 Solicitation provision and contract clause.**

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

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

Subpart 33.2—Disputes and Appeals

33.201 Definitions.

As used in this subpart—

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

“Alternative dispute resolution (ADR)” means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

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

“Issue in controversy” means a material disagreement between the Government and the contractor that—

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

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

33.202 GPOBCA Procedures.

(a) GPO Instruction 110.10C established the GPO Board of Contract Appeals (GPOBCA) to consider and determine appeals from final decisions of Contracting Officers relating to contracts which contain provisions requiring the determination of appeals by the Public Printer, or his duly authorized representative or board. GPO Instruction 110.12A establishes the GPOBCA’s rule of practice and procedure.

33.203 Applicability.

(a) Except as specified in paragraph (b) of this section, this part applies to any express or implied contract covered by the Materials Management Acquisition Regulation.

(b) This subpart does not apply to any contract with—

- (1) A foreign government or agency of that government, or
- (2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Act to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract.

33.204 Policy.

The GPO’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. The parties are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate.

33.205 Relationship of the Act to Public Law 85-804.

(a) Requests for relief under Public Law 85-804 (50 U.S.C. 1431-1435) are not claims within the Disputes clause at 52.233-1, Disputes, and shall be processed under Part 50, Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; *i.e.*, legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) of this section may be cognizable as a request for relief under Public Law 85-804 as implemented by Part 50. However, the claim must first be submitted to the contracting officer for consideration under the Disputes clause because the claim is not cognizable under Public Law 85-804, as implemented by Part 50, unless other legal authority in the agency concerned is determined to be lacking or inadequate.

33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contract-

ing parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

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

(c) 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.

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in 15.403-4(a)(1)(iii) regarding cost or pricing data).

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

(f) A defective certification shall not deprive a court or GPOBCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by GPOBCA, however, the court or GPOBCA shall require a defective certification to be corrected.

33.208 [Reserved]

33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the GPO Inspector General.

33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract. In accordance with agency policies and 33.214, contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

- (1) Review the facts pertinent to the claim;
- (2) Secure assistance from legal and other advisors;
- (3) Coordinate with the contract administration office or contracting office, as appropriate; and

(4) Prepare a written decision that shall include a—

- (i) Description of the claim or dispute;
- (ii) Reference to the pertinent contract terms;
- (iii) Statement of the factual areas of agreement and disagreement;

(iv) Statement of the contracting officer's decision, with supporting rationale;

(v) Paragraph substantially as follows:

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the GPO board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the GPOBCA, you may, solely at your election, proceed under the board's small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less.

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

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

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

(1) For claims of \$50,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$50,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

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

- (1) The size and complexity of the claim;
- (2) The adequacy of the contractor's supporting data; and
- (3) Any other relevant factors.

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding \$50,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

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

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

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

33.212 Contracting officer's duties upon appeal.

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

33.213 Obligation to continue performance.

(a) MMS may require a contractor to continue contract performance in accordance with the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233-1, Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233-1. A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233-1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

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

33.214 Alternative dispute resolution (ADR).

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

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

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

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

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

(e) The confidentiality of ADR proceedings shall be protected.

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

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

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

33.215 Contract clause.

The contracting officer shall insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions

in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract,

the contracting officer shall use the clause with its Alternate I.

* * * * *

**MATERIALS MANAGEMENT ACQUISITION
REGULATION**

**SUBCHAPTER F—SPECIAL CATEGORIES OF
CONTRACTING**

PART 34—MAJOR SYSTEM ACQUISITION

Sec.

Subpart 34.0—General

- 34.000 Scope of part.
- 34.001 Definition.
- 34.002 Policy.
- 34.003 Responsibilities.
- 34.004 Acquisition strategy.
- 34.005 General requirements.
- 34.005-1 Competition.
- 34.005-2 Mission-oriented solicitation.
- 34.005-3 Concept exploration contracts.
- 34.005-4 Demonstration contracts.

34.005-5 Full-scale development contracts.

34.005-6 Full production.

Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

34.100 Scope of subpart.

34.101 Definitions.

34.102 Policy.

34.103 Testing and qualification.

34.104 Contract clause.

This page intentionally left blank.

Subpart 34.0—General

34.000 Scope of part.

This part describes acquisition policies and procedures for use in acquiring major systems.

34.001 Definition.

“Effective competition,” as used in this part, is a market condition that exists when two or more contractors, acting independently, actively contend for the Government’s business in a manner that ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

34.002 Policy.

The policies of this part are designed to ensure that agencies acquire major systems in the most effective, economical, and timely manner. Agencies acquiring major systems shall—

(a) Promote innovation and full and open competition as required by Part 6 in the development of major system concepts by—

(1) Expressing agency needs and major system acquisition program objectives in terms of the agency’s mission and not in terms of specified systems to satisfy needs, and

(2) Focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial.

34.003 Responsibilities.

(a) The Public Printer or designee shall establish written procedures for its implementation.

(b) The agency procedures shall identify the key decision points of each major system acquisition and the agency official(s) for making those decisions.

(c) Systems acquisitions normally designated as major are those programs that, as determined by the agency head, (1) are directed at and critical to fulfilling an agency mission need, (2) entail allocating relatively large resources for the particular agency, and (3) warrant special management attention, including specific agency-head decisions. The agency procedures may establish additional criteria, as specified in A-109, for designating major programs system acquisitions.

34.004 Acquisition strategy.

The program manager, as specified in agency procedures, shall develop an acquisition strategy tailored to the particular major system acquisition program. This strategy is the program manager’s overall plan for satisfying the mission need in the most effective, economical, and timely manner. The strategy shall be in writing and prepared in accordance with

the requirements of Subpart 7.1, except where inconsistent with this part, and shall qualify as the acquisition plan for the major system acquisition, as required by that subpart.

34.005 General requirements.

34.005-1 Competition.

(a) The program manager shall, throughout the acquisition process, promote full and open competition and sustain effective competition between alternative major system concepts and sources, as long as it is economically beneficial and practicable to do so. Notice of the proposed acquisition shall be given the broadest and most effective circulation practicable throughout the business, academic, and Government communities. Foreign contractors, technology, and equipment may be considered when it is feasible and permissible to do so.

(b) The contracting officer should time solicitation issuance and contract award to maintain continuity of concept development during the transition from withdrawing concept proposer to new contractor.

34.005-2 Mission-oriented solicitation.

(a) Before issuing the solicitation, whenever practicable and consistent with agency procedures, the contracting officer should take the actions outlined in paragraphs (a)(1) and (2):

(1) Advance notification of the acquisition should be given the widest practicable dissemination, including publicizing through the Governmentwide point of entry (see Subpart 5.2) and should be sent to as wide a selection of potential sources as practicable, including smaller and newer firms, Government laboratories, federally funded research and development centers, educational institutions and other not-for-profit organizations, and, if it would be beneficial and is not prohibited, foreign sources.

(2) If appropriate, hold a presolicitation conference (see 15.201) and/or send copies of the proposed solicitation to all prospective offerors for their comments. After evaluation of these comments, the solicitation should be revised, if appropriate.

(b) The contracting officer shall send the final solicitation to all prospective offerors. It shall—

(1) Describe the nature of the need in terms of mission capabilities required, without reference to any specific systems to satisfy the need;

(2) Indicate, and explain when appropriate, the schedule, capability, and cost objectives and any known constraints in the acquisition;

(3) Provide, or indicate how access can be obtained to, all Government data related to the acquisition;

(4) Include selection requirements consistent with the acquisition strategy; and

(5) Clearly state that each offeror is free to propose its own technical approach, main design features, subsystems, and alternatives to schedule, cost, and capability goals.

(c) To the extent practicable, the solicitation shall not reference or mandate Government specifications or standards, unless the agency is mandating a subsystem or other component as approved under agency procedure.

34.005-3 Concept exploration contracts.

Whenever practicable, contracts to be performed during the concept exploration phase shall be for relatively short periods, at planned dollar levels. These contracts are to refine the proposed concept and to reduce the concept's technical uncertainties. The scope of work for this phase of the program shall be consistent with the Government's planned budget for the phase. Follow-on contracts for such tasks in the exploration phase shall be awarded as long as the concept approach remains promising, the contractor's progress is acceptable, and it is economically practicable to do so.

34.005-4 Demonstration contracts.

Whenever practicable, contracts for the demonstration phase should provide for contractors to submit, by the end of

the phase, priced proposals, totally funded by the Government, for full-scale development. The contracting officer should provide contractors with operational test conditions, performance criteria, life cycle cost factors, and any other selection criteria necessary for the contractors to prepare their proposals.

34.005-5 Full-scale development contracts.

Whenever practicable, the full-scale development contracts should provide for the contractors to submit priced proposals for production that are based on the latest quantity, schedule, and logistics requirements and other considerations that will be used in making the production decision.

34.005-6 Full production.

Contracts for full production of successfully tested major systems selected from the full-scale development phase may be awarded if the agency head—

- (a) Reaffirms the mission need and program objectives; and
- (b) Grants approval to proceed with production.

Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

34.100 Scope of subpart.

This subpart prescribes policies and procedures for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under section 301, 302, or 303 of the Defense Production Act (50 U.S.C. App. 2091-2093). Title III of the Defense Production Act authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense.

34.101 Definitions.

“Item of supply,” as used in this subpart, means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system. The term includes spare parts and replenishment parts, but does not include packaging or labeling associated with shipment or identification of an “item.”

34.102 Policy.

It is the policy of the Government, as required by Section 126 of Public Law 102-558, to pay for any testing and qualification required for the use or incorporation of the industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act of 1950.

34.103 Testing and qualification.

(a) Contractors receiving requests from a Title III project contractor for testing and qualification of a Title III industrial resource shall refer such requests to the contracting officer. The contracting officer shall evaluate the request in accordance with agency procedures to determine whether: (1) the Title III industrial resource is being or potentially may be used in the development or manufacture of a major system or item of supply; and (2) for major systems in production, remaining quantities to be acquired are sufficient to justify incurring the cost of testing and qualification. In evaluating this request, the contracting officer shall consult with the Defense Production Act Office, Title III Program, located at:

Wright Patterson Air Force Base
OH 45433-7739.

(b) If the determination at 34.103(a) is affirmative, the contracting officer shall modify the contract to require the contractor to test the Title III industrial resource for qualification.

(c) The Defense Production Act Office, Title III Program, shall provide to the contractor the industrial resource produced by the Title III project contractor in sufficient amounts to meet testing needs.

34.104 Contract clause.

Insert the clause at 52.234-1, Industrial Resources Developed under Title III, Defense Production Act, in all contracts for major systems and items of supply.

* * * * *

PART 35—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

35.000	Scope of part.	35.013	Insurance.
35.001	Definitions.	35.014	Government property and title.
35.002	General.	35.015	Contracts for research with educational institutions and nonprofit organizations.
35.003	Policy.	35.016	Broad agency announcement.
35.004	Publicizing requirements and expanding research and development sources.	35.017	Federally Funded Research and Development Centers.
35.005	Work statement.	35.017-1	Sponsoring agreements.
35.006	Contracting methods and contract type.	35.017-2	Establishing or changing an FFRDC.
35.007	Solicitations.	35.017-3	Using an FFRDC.
35.008	Evaluation for award.	35.017-4	Reviewing FFRDC's.
35.009	Subcontracting research and development effort.	35.017-5	Terminating an FFRDC.
35.010	Scientific and technical reports.	35.017-6	Master list of FFRDC's.
35.011	Data.	35.017-7	Limitation on the creation of new FFRDC's.
35.012	Patent rights.		

This page intentionally left blank.

35.000 Scope of part.

(a) This part prescribes policies and procedures of special application to research and development (R&D) contracting.

(b) R&D integral to acquisition of major systems is covered in Part 34. Independent research and development (IR&D) is covered at 31.205-18.

35.001 Definitions.

“Applied research” means the effort that (a) normally follows basic research, but may not be severable from the related basic research; (b) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques; and (c) attempts to advance the state of the art. When being used by contractors in cost principle applications, this term does not include efforts whose principal aim is the design, development, or testing of specific items or services to be considered for sale; these efforts are within the definition of “development,” given below.

“Development,” as used in this part, means the systematic use of scientific and technical knowledge in the design, development, testing, or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing; it excludes subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product.

“Recoupment,” as used in this part, means the recovery by the Government of Government-funded nonrecurring costs from contractors that sell, lease, or license the resulting products or technology to buyers other than the Federal Government.

35.002 General.

The primary purpose of contracted R&D programs is to advance scientific and technical knowledge and apply that knowledge to the extent necessary to achieve agency and national goals. Unlike contracts for supplies and services, most R&D contracts are directed toward objectives for which the work or methods cannot be precisely described in advance. It is difficult to judge the probabilities of success or required effort for technical approaches, some of which offer little or no early assurance of full success. The contracting process shall be used to encourage the best sources from the scientific and industrial community to become involved in the program and must provide an environment in which the work can be pursued with reasonable flexibility and minimum administrative burden.

35.003 Policy.

(a) *Use of contracts.* Contracts shall be used only when the principal purpose is the acquisition of supplies or ser-

vices for the direct benefit or use of the Federal Government. Grants or cooperative agreements should be used when the principal purpose of the transaction is to stimulate or support research and development for another public purpose.

(b) *Cost sharing.* Cost sharing policies (which are not otherwise required by law) under Government contracts shall be in accordance with 16.303, 42.707(a) and agency procedures.

(c) *Recoupment.* Recoupment not otherwise required by law shall be in accordance with agency procedures.

35.004 Publicizing requirements and expanding research and development sources.

(a) In order to obtain a broad base of the best contractor sources from the scientific and industrial community, agencies must, in addition to following the requirements of Part 5, continually search for and develop information on sources (including small business concerns) competent to perform R&D work. These efforts should include—

(1) Early identification and publication of agency R&D needs and requirements, including publicizing through the Governmentwide point of entry (GPE) (see Part 5);

(2) Cooperation among technical personnel, contracting officers, and Government small business personnel early in the acquisition process; and

(3) Providing agency R&D points of contact for potential sources.

(b) See Subpart 9.7 for information regarding R&D pools and Subpart 9.6 for teaming arrangements.

35.005 Work statement.

(a) A clear and complete work statement concerning the area of exploration (for basic research) or the end objectives (for development and applied research) is essential. The work statement should allow contractors freedom to exercise innovation and creativity. Work statements must be individually tailored by technical and contracting personnel to attain the desired degree of flexibility for contractor creativity and the objectives of the R&D.

(b) In basic research the emphasis is on achieving specified objectives and knowledge rather than on achieving predetermined end results prescribed in a statement of specific performance characteristics. This emphasis applies particularly during the early or conceptual phases of the R&D effort.

(c) In reviewing work statements, contracting officers should ensure that language suitable for a level-of-effort approach, which requires the furnishing of technical effort and a report on the results, is not intermingled with language suitable for a task-completion approach, which often requires the development of a tangible end item designed to achieve specific performance characteristics. The wording of the work statement should also be consistent with the type

and form of contract to be negotiated (see 16.207 and 16.306(d)). For example, the work statement for a cost-reimbursement contract promising the contractor's best efforts for a fixed term would be phrased differently than a work statement for a cost-reimbursement completion contract promising the contractor's best efforts for a defined task. Differences between work statements for fixed-price contracts and cost-reimbursement contracts should be even clearer.

(d) In preparing work statements, technical and contracting personnel shall consider and, as appropriate, provide in the solicitation—

(1) A statement of the area of exploration, tasks to be performed, and objectives of the research or development effort;

(2) Background information helpful to a clear understanding of the objective or requirement (*e.g.*, any known phenomena, techniques, methodology, or results of related work);

(3) Information on factors such as personnel, environment, and interfaces that may constrain the results of the effort;

(4) Reporting requirements and information on any additional items that the contractor is required to furnish (at specified intervals) as the work progresses;

(5) The type and form of contract contemplated by the Government and, for level-of-effort work statements, an estimate of applicable professional and technical effort involved; and

(6) Any other considerations peculiar to the work to be performed; for example, any design-to-cost requirements.

35.006 Contracting methods and contract type.

(a) In R&D acquisitions, the precise specifications necessary for sealed bidding are generally not available, thus making negotiation necessary. However, the use of negotiation in R&D contracting does not change the obligation to comply with Part 6.

(b) Selecting the appropriate contract type is the responsibility of the contracting officer. However, because of the importance of technical considerations in R&D, the choice of contract type should be made after obtaining the recommendations of technical personnel. Although the Government ordinarily prefers fixed-price arrangements in contracting, this preference applies in R&D contracting only to the extent that goals, objectives, specifications, and cost estimates are sufficient to permit such a preference. The precision with which the goals, performance objectives, and specifications for the work can be defined will largely determine the type of contract employed. The contract type must be selected to fit the work required.

(c) Because the absence of precise specifications and difficulties in estimating costs with accuracy (resulting in a lack

of confidence in cost estimates) normally precludes using fixed-price contracting for R&D, the use of cost-reimbursement contracts is usually appropriate (see Subpart 16.3). The nature of development work often requires a cost-reimbursement completion arrangement (see 16.306(d)). When the use of cost and performance incentives is desirable and practicable, fixed-price incentive and cost-plus-incentive-fee contracts should be considered in that order of preference.

(d) When levels of effort can be specified in advance, a short-duration fixed-price contract may be useful for developing system design concepts, resolving potential problems, and reducing Government risks. Fixed-price contracting may also be used in minor projects when the objectives of the research are well defined and there is sufficient confidence in the cost estimate for price negotiations. (See 16.207.)

(e) Projects having production requirements as a follow-on to R&D efforts normally should progress from cost-reimbursement contracts to fixed-price contracts as designs become more firmly established, risks are reduced, and production tooling, equipment, and processes are developed and proven. When possible, a final commitment to undertake specific product development and testing should be avoided until—

(1) Preliminary exploration and studies have indicated a high degree of probability that development is feasible and

(2) The Government has determined both its minimum requirements and desired objectives for product performance and schedule completion.

35.007 Solicitations.

(a) The submission and subsequent evaluation of an inordinate number of R&D proposals from sources lacking appropriate qualifications is costly and time-consuming to both industry and the Government. Therefore, contracting officers should initially distribute solicitations only to sources technically qualified to perform research or development in the specific field of science or technology involved. Cognizant technical personnel should recommend potential sources that appear qualified, as a result of—

(1) Present and past performance of similar work;

(2) Professional stature and reputation;

(3) Relative position in a particular field of endeavor;

(4) Ability to acquire and retain the professional and technical capability, including facilities, required to perform the work; and

(5) Other relevant factors.

(b) Proposals generally shall be solicited from technically qualified sources, including sources that become known as a result of synopses or other means of publicizing requirements. If it is not practicable to initially solicit all apparently qualified sources, only a reasonable number need be solicited. In the interest of competition, contracting officers shall

furnish copies of the solicitation to other apparently qualified sources.

(c) Solicitations shall require offerors to describe their technical and management approach, identify technical uncertainties, and make specific proposals for the resolution of any uncertainties. The solicitation should require offerors to include in the proposal any planned subcontracting of scientific or technical work (see 35.009).

(d) Solicitations may require that proposals be organized so that the technical portions can be efficiently evaluated by technical personnel (see 15.204-5(b)). Solicitation and evaluation of proposals should be planned to minimize offerors' and Government expense.

(e) R&D solicitations should contain evaluation factors to be used to determine the most technically competent (see 15.304), such as—

(1) The offeror's understanding of the scope of the work;

(2) The approach proposed to accomplish the scientific and technical objectives of the contract or the merit of the ideas or concepts proposed;

(3) The availability and competence of experienced engineering, scientific, or other technical personnel;

(4) The offeror's experience;

(5) Pertinent novel ideas in the specific branch of science and technology involved; and

(6) The availability, from any source, of necessary research, test, laboratory, or shop facilities.

(f) In addition to evaluation factors for technical competence, the contracting officer shall consider, as appropriate, management capability (including cost management techniques), experience and past performance, subcontracting practices, and any other significant evaluation criteria (*e.g.*, unrealistically low cost estimates in proposals for cost-reimbursement or fixed-price incentive contracts). Although cost or price is not normally the controlling factor in selecting a contractor to perform R&D, it should not be disregarded in arriving at a selection that best satisfies the Government's requirement at a fair and reasonable cost.

(g) The contracting officer should ensure that potential offerors fully understand the details of the work, especially the Government interpretation of the work statement. If the effort is complex, the contracting officer should provide potential offerors an opportunity to comment on the details of the requirements as contained in the work statement, the contract Schedule, and any related specifications. This may be done at a preproposal conference (see 15.201).

(h) If it is appropriate to do so, solicitations should permit offerors to propose an alternative contract type (see 16.103).

(i) In circumstances when a concern has a new idea or product to discuss that incorporates the results of independent R&D work funded by the concern in the private sector

and is of interest to the Government, there should be no hesitancy to discuss it; however, the concern should be warned that the Government will not be obligated by the discussion. Under such circumstances, it may be appropriate to negotiate directly with the concern without competition. Also, see Subpart 15.6 concerning unsolicited proposals.

(j) The Government may issue an exploratory request to determine the existence of ideas or prior work in a specific field of research. Any such request shall clearly state that it does not impose any obligation on the Government or signify a firm intention to enter into a contract.

35.008 Evaluation for award.

(a) Generally, an R&D contract should be awarded to that organization, including any educational institution, that proposes the best ideas or concepts and has the highest competence in the specific field of science or technology involved. However, an award should not be made to obtain capabilities that exceed those needed for successful performance of the work.

(b) In R&D contracting, precise specifications are ordinarily not available. The contracting officer should therefore take special care in reviewing the solicitation evaluation factors to assure that they are properly presented and consistent with the solicitation.

(c) When a small business concern would otherwise be selected for award but is considered not responsible, the SBA Certificate of Competency procedure shall be followed (see Subpart 19.6).

(d) The contracting officer should use the procedures in Subpart 15.5 to notify and debrief offerors.

(e) It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable but also to provide valuable insight into the offeror's understanding of the project, perception of risks, and ability to organize and perform the work. Cost or price analysis, as appropriate (see 15.404-1(c)), is a useful tool.

35.009 Subcontracting research and development effort.

Since the selection of R&D contractors is substantially based on the best scientific and technological sources, it is important that the contractor not subcontract technical or scientific work without the contracting officer's advance knowledge. During the negotiation of a cost-reimbursement R&D contract, the contracting officer shall obtain complete information concerning the contractor's plans for subcontracting any portion of the experimental, research, or development effort (see also 35.007(c)). Also, when negotiating a fixed-price contract, the contracting officer should evaluate this information and may obtain an agreement that protects the Government's interests. The clause at 52.244-2, Subcontracts, prescribed for certain types of contracts at 44.204(a),

requires the contracting officer's prior approval for the placement of certain subcontracts.

35.010 Scientific and technical reports.

(a) R&D contracts shall require contractors to furnish scientific and technical reports, consistent with the objectives of the effort involved, as a permanent record of the work accomplished under the contract.

(b) Agencies should make R&D contract results available to other Government activities and the private sector. Contracting officers shall follow agency regulations regarding such matters as national security, protection of data, and new-technology dissemination policy. Reports should be sent to the:

National Technical Information Service (NTIS)
5285 Port Royal Road
Springfield, VA 22161.

When agencies require that completed reports be covered by a report documentation page, Standard Form (SF) 298, Report Documentation Page, the contractor should submit a copy with the report.

35.011 Data.

(a) R&D contracts shall specify the technical data to be delivered under the contract, since the data clauses required by Part 27 do not require the delivery of any such data.

(b) In planning a developmental program when subsequent production contracts are contemplated, consideration should be given to the need and time required to obtain a technical package (plans, drawings, specifications, and other descriptive information) that can be used to achieve competition in production contracts. In some situations, the developmental contractor may be in the best position to produce such a technical package.

35.012 Patent rights.

For a discussion of patent rights, see agency regulations and Part 27.

35.013 Insurance.

Nonprofit, educational, or State institutions performing cost-reimbursement contracts often do not carry insurance. They may claim immunity from liability for torts, or, as State institutions, they may be prohibited by State law from expending funds for insurance. When this is the case, see 28.311 for appropriate clause coverage.

35.014 Government property and title.

(a) The requirements in Part 45 for establishing and maintaining control over Government property apply to all R&D contracts.

(b) The policies in paragraphs (1) through (4) following, regarding title to equipment (and other tangible personal property) purchased by the contractor using Government funds provided for the conduct of basic or applied scientific research, apply to contracts with nonprofit institutions of higher education and nonprofit organizations whose primary purpose is the conduct of scientific research:

(1) If the contractor obtains the contracting officer's advance approval, the contractor shall automatically acquire and retain title to any item of equipment costing less than \$5,000 (or a lesser amount established by agency regulations) acquired on a reimbursable basis.

(2) If purchased equipment costs \$5,000 (or a lesser amount established by agency regulations) or more, and as the parties specifically agree in the contract, title may—

(i) Vest in the contractor upon acquisition without further obligation to the Government;

(ii) Vest in the contractor, subject to the Government's right to direct transfer of the title to the Government or to a third party within 12 months after the contract's completion or termination (transfer of title to the Government or third party shall not be the basis for any claim by the contractor); or

(iii) Vest in the Government, if the contracting officer determines that vesting of title in the contractor would not further the objectives of the agency's research program.

(3) If title to equipment is vested in the contractor, depreciation, amortization, or use charges are not allowable with respect to that equipment under any existing or future Government contract or subcontract.

(4) If the contract is performed at a Government installation and there is a continuing need for the equipment following contract completion, title need not be transferred to the contractor.

(c) The absence of an agreement covering title to equipment acquired by the contractor with Government funds that cost \$1,000 or more does not limit an agency's right to act to vest title in a contractor.

(d)(1) Vesting title under paragraph (b) of this section is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested, the contractor must agree that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

(2) By signing the contract, the contractor accepts and agrees to comply with this requirement.

(e) The policies in paragraphs (b)(1) through (b)(3) and paragraph (d) of this section are implemented in the Government property clauses (Alternate II of the clause at 52.245-2,

Government Property (Fixed-Price Contracts); Alternate I of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts); Alternate I of the clause at 52.245-11, Government Property (Facilities Use); and the clause at 52.245-15, Transfer of Title to the Facilities, which are prescribed in Part 45 (at 45.106 for fixed-price and cost-reimbursement contracts and at 45.302-6 and 45.302-7 for facilities contracts).

35.015 Contracts for research with educational institutions and nonprofit organizations.

(a) *General.* (1) When the R&D work is not defined precisely and the contract states only a period during which work is conducted (that is, a specific time for achievement of results is not required), research contracts with educational institutions and nonprofit organizations shall—

(i) State that the contractor bears primary responsibility for the research;

(ii) Give—

(A) The name of the principal investigator (or project leader), if the decision to contract is based on that particular individual's research effort and management capabilities; and

(B) The contractor's estimate of the amount of time that individual will devote to the work;

(iii) Provide that the named individual shall be closely involved and continuously responsible for the conduct of the work;

(iv) Provide that the contractor must obtain the contracting officer's approval to change the principal investigator (or project leader);

(v) Require that the contractor advise the contracting officer if the principal investigator (or project leader) will, or plans to, devote substantially less effort to the work than anticipated; and

(vi) Require that the contractor obtain the contracting officer's approval to change the phenomenon under study, the stated objectives of the research, or the methodology.

(2) If a research contract does provide precise objectives or a specific date for achievement of results, the contracting officer may include in the contract the requirements set forth in paragraph (a)(1) of this section, if it is necessary for the Government to exercise oversight and approval over the avenues of approach, methods, or schedule of work.

(b) *Basic agreements.* (1) A basic agreement should be negotiated if the number of contracts warrants such an agreement (see 16.702). Basic agreements should be reviewed and updated at least annually.

(2) To promote uniformity and consistency in dealing with educational institutions and nonprofit organizations, agencies are encouraged to use basic agreements of other agencies.

35.016 Broad agency announcement.

(a) *General.* This paragraph prescribes procedures for the use of the broad agency announcement (BAA) with Peer or Scientific Review (see 6.102(d)(2)) for the acquisition of basic and applied research and that part of development not related to the development of a specific system or hardware procurement. BAA's may be used by agencies to fulfill their requirements for scientific study and experimentation directed toward advancing the state-of-the-art or increasing knowledge or understanding rather than focusing on a specific system or hardware solution. The BAA technique shall only be used when meaningful proposals with varying technical/scientific approaches can be reasonably anticipated.

(b) The BAA, together with any supporting documents, shall—

(1) Describe the agency's research interest, either for an individual program requirement or for broadly defined areas of interest covering the full range of the agency's requirements;

(2) Describe the criteria for selecting the proposals, their relative importance, and the method of evaluation;

(3) Specify the period of time during which proposals submitted in response to the BAA will be accepted; and

(4) Contain instructions for the preparation and submission of proposals.

(c) The availability of the BAA must be publicized through the Governmentwide point of entry (GPE) and, if authorized pursuant to Subpart 5.5, may also be published in noted scientific, technical, or engineering periodicals. The notice must be published no less frequently than annually. When transmitting a notice to the GPE before January 1, 2002, contracting officers must direct the GPE to forward the notice to the Commerce Business Daily.

(d) Proposals received as a result of the BAA shall be evaluated in accordance with evaluation criteria specified therein through a peer or scientific review process. Written evaluation reports on individual proposals will be necessary but proposals need not be evaluated against each other since they are not submitted in accordance with a common work statement.

(e) The primary basis for selecting proposals for acceptance shall be technical, importance to agency programs, and fund availability. Cost realism and reasonableness shall also be considered to the extent appropriate.

(f) Synopsis under Subpart 5.2, Synopses of Proposed Contract Actions, of individual contract actions based upon proposals received under the BAA is not required. The notice published pursuant to paragraph (c) of this section fulfills the synopsis requirement.

35.017 Federally Funded Research and Development Centers.

(a) *Policy.* (1) This section sets forth Federal policy regarding the establishment, use, review, and termination of Federally Funded Research and Development Centers (FFRDC's) and related sponsoring agreements.

(2) An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor resources. FFRDC's enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency. An FFRDC, in order to discharge its responsibilities to the sponsoring agency, has access, beyond that which is common to the normal contractual relationship, to Government and supplier data, including sensitive and proprietary data, and to employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the Government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency. It is not the Government's intent that an FFRDC use its privileged information or access to facilities to compete with the private sector. However, an FFRDC may perform work for other than the sponsoring agency under the Economy Act, or other applicable legislation, when the work is not otherwise available from the private sector.

(3) FFRDC's are operated, managed, and/or administered by either a university or consortium of universities, other not-for-profit or nonprofit organization, or an industrial firm, as an autonomous organization or as an identifiable separate operating unit of a parent organization.

(4) Long-term relationships between the Government and FFRDC's are encouraged in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the needs of its sponsor(s), and provide a quick response capability.

(b) *Definitions.* As used in this section—

“Nonsponsor” means any other organization, in or outside of the Federal Government, which funds specific work to be performed by the FFRDC and is not a party to the sponsoring agreement.

“Primary sponsor” means the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement.

“Sponsor” means the executive agency which manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC. Multiple agency sponsorship is possible as long as one agency agrees to act as the “primary

sponsor.” In the event of multiple sponsors, “sponsor” refers to the primary sponsor.

35.017-1 Sponsoring agreements.

(a) In order to facilitate a long-term relationship between the Government and an FFRDC, establish the FFRDC's mission, and ensure a periodic reevaluation of the FFRDC, a written agreement of sponsorship between the Government and the FFRDC shall be prepared when the FFRDC is established. The sponsoring agreement may take various forms; it may be included in a contract between the Government and the FFRDC, or in another legal instrument under which an FFRDC accomplishes effort, or it may be in a separate written agreement. Notwithstanding its form, the sponsoring agreement shall be clearly designated as such by the sponsor.

(b) While the specific content of any sponsoring agreement will vary depending on the situation, the agreement shall contain, as a minimum, the requirements of paragraph (c) of this subsection. The requirements for, and the contents of, sponsoring agreements may be as further specified in sponsoring agencies' policies and procedures.

(c) As a minimum, the following requirements must be addressed in either a sponsoring agreement or sponsoring agencies' policies and procedures:

(1) A statement of the purpose and mission of the FFRDC.

(2) Provisions for the orderly termination or nonrenewal of the agreement, disposal of assets, and settlement of liabilities. The responsibility for capitalization of an FFRDC must be defined in such a manner that ownership of assets may be readily and equitably determined upon termination of the FFRDC's relationship with its sponsor(s).

(3) A provision for the identification of retained earnings (reserves) and the development of a plan for their use and disposition.

(4) A prohibition against the FFRDC competing with any non-FFRDC concern in response to a Federal agency request for proposal for other than the operation of an FFRDC. This prohibition is not required to be applied to any parent organization or other subsidiary of the parent organization in its non-FFRDC operations. Requests for information, qualifications or capabilities can be answered unless otherwise restricted by the sponsor.

(5) A delineation of whether or not the FFRDC may accept work from other than the sponsor(s). If nonsponsor work can be accepted, a delineation of the procedures to be followed, along with any limitations as to the nonsponsors from which work can be accepted (other Federal agencies, State or local governments, nonprofit or profit organizations, etc.).

(d) The sponsoring agreement or sponsoring agencies' policies and procedures may also contain, as appropriate, other provisions, such as identification of—

(1) Any cost elements which will require advance agreement if cost-type contracts are used; and

(2) Considerations which will affect negotiation of fees where payment of fees is determined by the sponsor(s) to be appropriate.

(e) The term of the agreement will not exceed 5 years, but can be renewed, as a result of periodic review, in increments not to exceed 5 years.

35.017-2 Establishing or changing an FFRDC.

To establish an FFRDC, or change its basic purpose and mission, the sponsor shall ensure the following:

(a) Existing alternative sources for satisfying agency requirements cannot effectively meet the special research or development needs.

(b) The notices required for publication (see 5.205(b)) are placed as required.

(c) There is sufficient Government expertise available to adequately and objectively evaluate the work to be performed by the FFRDC.

(d) The Executive Office of the President, Office of Science and Technology Policy, Washington, DC 20506, is notified.

(e) Controls are established to ensure that the costs of the services being provided to the Government are reasonable.

(f) The basic purpose and mission of the FFRDC is stated clearly enough to enable differentiation between work which should be performed by the FFRDC and that which should be performed by non-FFRDC's.

(g) A reasonable continuity in the level of support to the FFRDC is maintained, consistent with the agency's need for the FFRDC and the terms of the sponsoring agreement.

(h) The FFRDC is operated, managed, or administered by an autonomous organization or as an identifiably separate operating unit of a parent organization, and is required to operate in the public interest, free from organizational conflict of interest, and to disclose its affairs (as an FFRDC) to the primary sponsor.

(i) Quantity production or manufacturing is not performed unless authorized by legislation.

(j) Approval is received from the head of the sponsoring agency.

35.017-3 Using an FFRDC.

(a) All work placed with the FFRDC must be within the purpose, mission, general scope of effort, or special competency of the FFRDC.

(b) Where the use of the FFRDC by a nonsponsor is permitted by the sponsor, the sponsor shall be responsible for compliance with paragraph (a) of this subsection. The non-sponsoring agency is responsible for making the determination required by 17.502 and providing the documentation required by 17.504(e). When permitted by the sponsor, a

Federal agency may contract directly with the FFRDC in which case that Federal agency is responsible for compliance with Part 6.

35.017-4 Reviewing FFRDC's.

(a) The sponsor, prior to extending the contract or agreement with an FFRDC, shall conduct a comprehensive review of the use and need for the FFRDC. The review will be coordinated with any co-sponsors and may be performed in conjunction with the budget process. If the sponsor determines that its sponsorship is no longer appropriate, it shall apprise other agencies which use the FFRDC of the determination and afford them an opportunity to assume sponsorship.

(b) Approval to continue or terminate the sponsorship shall rest with the head of the sponsoring agency. This determination shall be based upon the results of the review conducted in accordance with paragraph (c) of this subsection.

(c) An FFRDC review should include the following:

(1) An examination of the sponsor's special technical needs and mission requirements that are performed by the FFRDC to determine if and at what level they continue to exist.

(2) Consideration of alternative sources to meet the sponsor's needs.

(3) An assessment of the efficiency and effectiveness of the FFRDC in meeting the sponsor's needs, including the FFRDC's ability to maintain its objectivity, independence, quick response capability, currency in its field(s) of expertise, and familiarity with the needs of its sponsor.

(4) An assessment of the adequacy of the FFRDC management in ensuring a cost-effective operation.

(5) A determination that the criteria for establishing the FFRDC continue to be satisfied and that the sponsoring agreement is in compliance with 35.017-1.

35.017-5 Terminating an FFRDC.

When a sponsor's need for the FFRDC no longer exists, the sponsorship may be transferred to one or more Government agencies, if appropriately justified. If the FFRDC is not transferred to another Government agency, it shall be phased out.

35.017-6 Master list of FFRDC's.

The National Science Foundation (NSF) maintains a master Government list of FFRDC's. Primary sponsors will provide information on each FFRDC, including sponsoring agreements, mission statements, funding data, and type of R&D being performed, to the NSF upon its request for such information.

35.017-7 Limitation on the creation of new FFRDC's.

Pursuant to 10 U.S.C. 2367, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the

Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration may not obligate or expend amounts appropriated to the Department of Defense for purposes of operating an FFRDC that was not in existence before June 2, 1986, until—

(a) The head of the agency submits to Congress a report with respect to such center that describes the purpose, mission, and general scope of effort of the center; and

(b) A period of 60 days, beginning on the date such report is received by Congress, has elapsed.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

36.000	Scope of part.	36.504	Physical data.
	Subpart 36.1—General	36.505	Material and workmanship.
36.101	Applicability.	36.506	Superintendence by the contractor.
36.102	Definitions.	36.507	Permits and responsibilities.
36.103	Methods of contracting.	36.508	Other contracts.
36.104	Policy.	36.509	Protection of existing vegetation, structures, equipment, utilities, and improvements.
	Subpart 36.2—Special Aspects of Contracting for Construction	36.510	Operations and storage areas.
36.201	Evaluation of contractor performance.	36.511	Use and possession prior to completion.
36.202	Specifications.	36.512	Cleaning up.
36.203	Government estimate of construction costs.	36.513	Accident prevention.
36.204	Disclosure of the magnitude of construction projects.	36.514	Availability and use of utility services.
36.205	Statutory cost limitations.	36.515	Schedules for construction contracts.
36.206	Liquidated damages.	36.516	Quantity surveys.
36.207	Pricing fixed-price construction contracts.	36.517	Layout of work.
36.208	Concurrent performance of firm-fixed-price and other types of construction contracts.	36.518	Work oversight in cost-reimbursement construction contracts.
36.209	Construction contracts with architect-engineer firms.	36.519	Organization and direction of the work.
36.210	Inspection of site and examination of data.	36.520	Contracting by negotiation.
36.211	Distribution of advance notices and solicitations.	36.521	Specifications and drawings for construction.
36.212	Preconstruction orientation.	36.522	Preconstruction conference.
36.213	Special procedures for sealed bidding in construction contracting.	36.523	Site visit.
36.213-1	General.		Subpart 36.6—Architect-Engineer Services
36.213-2	Presolicitation notices.	36.600	Scope of subpart.
36.213-3	Invitations for bids.	36.601	Policy.
36.213-4	Notice of award.	36.601-1	Public announcement.
36.214	Special procedures for price negotiation in construction contracting.	36.601-2	Competition.
36.215	Special procedure for cost-reimbursement contracts for construction.	36.601-3	Applicable contracting procedures.
	Subpart 36.3—Two-Phase Design-Build Selection Procedures	36.601-4	Implementation.
36.300	Scope of subpart.	36.602	Selection of firms for architect-engineer contracts.
36.301	Use of two-phase design-build selection procedures.	36.602-1	Selection criteria.
36.302	Scope of work.	36.602-2	Evaluation boards.
36.303	Procedures.	36.602-3	Evaluation board functions.
36.303-1	Phase One.	36.602-4	Selection authority.
36.303-2	Phase Two.	36.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
	Subpart 36.4—[Reserved]	36.603	Collecting data on and appraising firms qualifications.
	Subpart 36.5—Contract Clauses	36.604	Performance evaluation.
36.500	Scope of subpart.	36.605	Government cost estimate for architect-engineer work.
36.501	Performance of work by the contractor.	36.606	Negotiations.
36.502	Differing site conditions.	36.607	Release of information on firm selection.
36.503	Site investigation and conditions affecting the work.	36.608	Liability for Government costs resulting from design errors or deficiencies.
		36.609	Contract clauses.
		36.609-1	Design within funding limitations.
		36.609-2	Redesign responsibility for design errors or deficiencies.
		36.609-3	Work oversight in architect-engineer contracts.

MATERIALS MANAGEMENT ACQUISITION REGULATION

36.609-4 Requirements for registration of designers.

Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

36.700 Scope of subpart.

36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

36.702 Forms for use in contracting for architect-engineer services.

36.000 Scope of part.

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

Subpart 36.1—General**36.101 Applicability.**

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this Part 36 shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include—

(1) Clauses applicable to the predominant part of the work (see Subpart 22.4), or

(2) If the contract is divided into parts, the clauses applicable to each portion.

36.102 Definitions.

As used in this part—

“Contract” is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

“Design” means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

“Design-bid-build” means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

“Design-build” means combining design and construction in a single contract with one contractor.

“Firm” in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

“Plans and specifications” means drawings, specifications, and other data for and preliminary to the construction.

“Record drawings” means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

“Two-phase design-build selection procedures” is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see Subpart 36.3).

36.103 Methods of contracting.

(a) Contracting officers shall acquire construction using sealed bid procedures if the conditions in 6.401(a) apply, except that sealed bidding need not be used for construction contracts to be performed outside the United States, its possessions, or Puerto Rico. (See 6.401(b)(2).)

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, Subpart 36.6, and agency regulations.

36.104 Policy.

Unless the traditional acquisition approach of design-bid-build established under the Brooks Architect-Engineers Act (40 U.S.C. 541, *et seq.*) or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by 41 U.S.C. 253m when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see Subpart 36.3). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter.

Subpart 36.2—Special Aspects of Contracting for Construction

36.201 Evaluation of contractor performance.

(a) *Preparation of performance evaluation reports.*

(1) The contracting activity shall evaluate contractor performance and prepare a performance report using the SF 1420, Performance Evaluation (Construction Contracts), for each construction contract of—

(i) \$500,000 or more; or

(ii) More than \$10,000, if the contract was terminated for default.

(2) The report shall be prepared at the time of final acceptance of the work, at the time of contract termination, or at other times, as appropriate, in accordance with agency procedures. Ordinarily, the evaluating official who prepares the report should be the person responsible for monitoring contract performance.

(3) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(4) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* (1) Each performance report shall be distributed in accordance with agency procedures. One copy shall be included in the contract file. The contracting activity shall retain the report for at least six years after the date of the report.

(2) Before making a determination of responsibility in accordance with Subpart 9.1, the contracting officer may consider performance reports in accordance with agency instructions.

36.202 Specifications.

(a) Construction specifications shall conform to the requirements in Part 11 of this regulation.

(b) Whenever possible, contracting officers shall ensure that references in specifications are to widely recognized standards or specifications promulgated by governments, industries, or technical societies.

(c) When "brand name or equal" descriptions are necessary, specifications must clearly identify and describe the

particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement.

36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to cost \$100,000 or more. The contracting officer may require an estimate when the cost of required work is anticipated to be less than \$100,000. The estimate shall be prepared in as much detail as though the Government were competing for award.

(b) When two-step sealed bidding is used, the independent Government estimate shall be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.

36.204 Disclosure of the magnitude of construction projects.

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government's estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

(a) Less than \$25,000.

(b) Between \$25,000 and \$100,000.

(c) Between \$100,000 and \$250,000.

(d) Between \$250,000 and \$500,000.

(e) Between \$500,000 and \$1,000,000.

(f) Between \$1,000,000 and \$5,000,000.

(g) Between \$5,000,000 and \$10,000,000.

(h) More than \$10,000,000.

36.205 Statutory cost limitations.

(a) Contracts for construction shall not be awarded at a cost to the Government—

(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) Solicitations containing one or more items subject to statutory cost limitations shall state—

(1) The applicable cost limitation for each affected item in a separate schedule;

(2) That an offer which does not contain separately-priced schedules will not be considered; and

(3) That the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbalanced if its prices are significantly less than cost for some work, and overstated for other work.

36.206 Liquidated damages.

The contracting officer must evaluate the need for liquidated damages in a construction contract in accordance with 11.502 and agency regulations.

36.207 Pricing fixed-price construction contracts.

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced—

(1) On a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work),

(2) On a unit-price basis (when a unit price is paid for a specified quantity of work units), or

(3) Using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an

adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

36.209 Construction contracts with architect-engineer firms.

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

36.210 Inspection of site and examination of data.

The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the Government which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in one place and made available for examination. The solicitation should notify offerors of the time and place for the site inspection and data examination. If it is not feasible for offerors to inspect the site or examine the data on their own, the solicitation should also designate an individual who will show the site or data to the offerors. Significant site information and the data should be made available to all offerors in the same manner, including information regarding any utilities to be furnished during construction. A record should be kept of the identity and affiliation of all offerors' representatives who inspect the site or examine the data.

36.211 Distribution of advance notices and solicitations.

Advance notices and solicitations should be distributed to reach as many prospective offerors as practicable. Contracting officers may send notices and solicitations to organizations that maintain, without charge to the public, display rooms for the benefit of prospective offerors, subcontractors, and material suppliers. If requested by such organizations, this may be done for all or a stated class of construction projects on an annual or semiannual basis. Contracting officers may determine the geographical extent of distribution of advance notices and solicitations on a case-by-case basis.

36.212 Preconstruction orientation.

(a) The contracting officer will inform the successful offeror of significant matters of interest, including—

(1) Statutory matters such as labor standards (Subpart 22.4), and subcontracting plan requirements (Subpart 19.7); and

(2) Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (*e.g.*, security, safety, and fire and environmental protection), and construction responsibilities.

(b) As appropriate, the contracting officer may issue an explanatory letter or conduct a preconstruction conference.

(c) If a preconstruction conference is to be held, the contracting officer shall—

(1) Conduct the conference prior to the start of construction at the work site;

(2) Notify the successful offeror of the date, time, and location of the conference (see 36.522); and

(3) Inform the successful offeror of the proposed agenda and any need for attendance by subcontractors.

36.213 Special procedures for sealed bidding in construction contracting.**36.213-1 General.**

Contracting officers shall follow the procedures for sealed bidding in Part 14, as modified and supplemented by the requirements in this subpart.

36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed \$100,000. Presolicitation notices may also be used when the proposed contract is expected to be less than \$100,000. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices must—

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see 36.204);

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) Notify recipients that if they do not submit a bid they should advise the issuing office as to whether they want to receive future presolicitation notices;

(7) State whether award is restricted to small businesses;

(8) Specify any amount to be charged for solicitation documents; and

(9) Be publicized through the Governmentwide point of entry in accordance with 5.204.

36.213-3 Invitations for bids.

(a) Invitations for bids for construction shall allow sufficient time for bid preparation (*i.e.*, the period of time between the date invitations are distributed and the date set for opening of bids) (but see 5.203 and 14.202-1) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the construction season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) Invitations for bids shall be prepared in accordance with Subpart 14.2 and this section using the forms prescribed in Part 53.

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable:

(1) The appropriate wage determination of the Secretary of Labor (see Subpart 22.4), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and Subpart 22.4).

(2) The Performance of Work by the Contractor clause (see 36.501 and 52.236-1).

(3) The magnitude of the proposed construction project (see 36.204).

(4) The period of performance (see Subpart 11.4).

(5) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see 36.210).

(6) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during construction.

(7) Information concerning the prebid conference (see 14.207).

(8) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see Subpart 9.1).

(9) Any special instructions concerning bids, alternate bids, and award.

(10) Any instructions concerning reporting requirements.

(d) The contracting officer shall send invitations for bids to prospective bidders who requested them in response to the presolicitation notice, and should send them to other pro-

spective bidders upon their specific request (see 14.205 and 5.102(a)).

36.213-4 Notice of award.

When a notice of award is issued, it shall be done in writing or electronically, shall contain information required by 14.408, and shall—

- (a) Identify the invitation for bids;
- (b) Identify the contractor's bid;
- (c) State the award price;
- (d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;
- (e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

36.214 Special procedures for price negotiation in construction contracting.

- (a) Agencies shall follow the policies and procedures in Part 15 when negotiating prices for construction.
- (b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see 15.403-1 and 15.403-2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (*e.g.*, wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

36.215 Special procedure for cost-reimbursement contracts for construction.

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with Subpart 16.3 and Part 15 (see 15.404-4(c)(4)(i) for fee limitation on cost-reimbursement contracts).

Subpart 36.3—Two-Phase Design-Build Selection Procedures

36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures.

36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see Part 7), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the contracting officer determines that this method is appropriate, based on the following:

(1) Three or more offers are anticipated.

(2) Design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.

(3) The following criteria have been considered:

(i) The extent to which the project requirements have been adequately defined.

(ii) The time constraints for delivery of the project.

(iii) The capability and experience of potential contractors.

(iv) The suitability of the project for use of the two-phase selection method.

(v) The capability of the agency to manage the two-phase selection process.

(vi) Other criteria established by the head of the contracting activity.

36.302 Scope of work.

The agency shall develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in Subpart 36.6 shall be used.

36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will

be evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

36.303-1 Phase One.

(a) Phase One of the solicitation(s) shall include—

(1) The scope of work;

(2) The phase-one evaluation factors, including—

(i) Technical approach (but not detailed design or technical information);

(ii) Technical qualifications, such as—

(A) Specialized experience and technical competence;

(B) Capability to perform;

(C) Past performance of the offeror's team (including the architect-engineer and construction members); and

(iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);

(3) Phase-two evaluation factors (see 36.303-2); and

(4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting).

(b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with 36.303-1(a)(4)) and request that only those offerors submit phase-two proposals.

36.303-2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with Part 15, and include phase-two evaluation factors, developed in accordance with 15.304. Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with Part 15.

Subpart 36.4—[Reserved]

Subpart 36.5—Contract Clauses

36.500 Scope of subpart.

This subpart prescribes clauses for insertion in solicitations and contracts for (a) construction and (b) dismantling, demolition, or removal of improvements contracts. Provisions and clauses prescribed elsewhere in the Materials Management Acquisition Regulation (MMAR) shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own forces. This percentage is (1) as high as the contracting officer considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.

(b) The contracting officer shall insert the clause at 52.236-1, Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to Subparts 19.5 or 19.8, when a fixed-price construction contract is contemplated and the contract amount is expected to exceed \$1,000,000. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be \$1,000,000 or less.

36.502 Differing site conditions.

The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.503 Site investigation and conditions affecting the work.

The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.504 Physical data.

The contracting officer shall insert the clause at 52.236-4, Physical Data, in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic data, weather conditions data) will be furnished or made available to offerors.

36.505 Material and workmanship.

The contracting officer shall insert the clause at 52.236-5, Material and Workmanship, in solicitations and contracts for construction contracts.

36.506 Superintendence by the contractor.

The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.507 Permits and responsibilities.

The contracting officer shall insert the clause at 52.236-7, Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

36.508 Other contracts.

The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the

simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.510 Operations and storage areas.

The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.511 Use and possession prior to completion.

The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified acquisition threshold. This clause may be inserted in solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold.

36.512 Cleaning up.

The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a

fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

36.513 Accident prevention.

(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see 48 CFR part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

36.514 Availability and use of utility services.

The contracting officer shall insert the clause at 52.236-14, Availability and Use of Utility Services, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites, and the contracting officer decides (a) that the existing utility system(s) is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

36.515 Schedules for construction contracts.

The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements.

This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.

36.516 Quantity surveys.

The contracting officer may insert the clause at 52.236-16, Quantity Surveys, in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated. If it is determined at a level above that of the contracting officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the contractor to perform these surveys, the clause shall be used with its Alternate.

36.517 Layout of work.

The contracting officer shall insert the clause at 52.236-17, Layout of Work, in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance.

36.518 Work oversight in cost-reimbursement construction contracts.

The contracting officer shall insert the clause at 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.519 Organization and direction of the work.

The contracting officer shall insert the clause at 52.236-19, Organization and Direction of the Work, in solicitations and contracts when a cost-reimbursement construction contract is contemplated.

36.520 Contracting by negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236-28, Preparation of Offers—Construction, when contracting by negotiation.

36.521 Specifications and drawings for construction.

The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. When the Government needs record drawings, the contracting officer shall—

(a) Use the clause with its Alternate I, if reproducible shop drawings are needed; or

(b) Use the clause with its Alternate II, if reproducible shop drawings are not needed.

36.522 Preconstruction conference.

If the contracting officer determines it may be desirable to hold a preconstruction conference, the contracting officer shall insert a clause substantially the same as the clause at 52.236-26, Preconstruction Conference, in solicitations and fixed price contracts for construction or for dismantling, demolition or removal of improvements.

36.523 Site visit.

The contracting officer shall insert a provision substantially the same as the provision at 52.236-27, Site Visit (Construction), in solicitations which include the clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work. Alternate I may be used when an organized site visit will be conducted.

Subpart 36.6—Architect-Engineer Services

36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services.

36.601 Policy.

36.601-1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See Pub. L. 92-582, as amended; 40 U.S.C. 541-544.)

36.601-2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See 6.102(d)(1).)

36.601-3 Applicable contracting procedures.

(a) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

(b) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in Parts 13, 14, and 15 of this regulation.

(c) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in Parts 13, 14, or 15.

(d) Other than “incidental services” as specified in the definition of architect-engineer services in 2.101 and in 36.601-4(a)(3), services that do not require performance by a registered or licensed architect or engineer, notwithstanding the fact that architect-engineers also may perform those services, should be acquired pursuant to Parts 13, 14, and 15.

36.601-4 Implementation.

(a) Contracting officers should consider the following services to be “architect-engineer services” subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section 36.601 from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section 36.601. However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in Parts 13, 14, and 15.

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

36.602 Selection of firms for architect-engineer contracts.

36.602-1 Selection criteria.

(a) Agencies shall evaluate each potential contractor in terms of its—

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;

(3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the agency head or a designee, agencies may evaluate firms on the basis of their conceptual design of the project. Design competition may be used when—

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy-efficiency in facility design (see Part 23).

36.602-2 Evaluation boards.

(a) When acquiring architect-engineer services, an agency shall provide for one or more permanent or ad hoc architect-engineer evaluation boards (which may include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering, or related professions. One Government member of each board shall be designated as the chairperson.

(b) No firm shall be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

36.602-3 Evaluation board functions.

Under the general direction of the head of the contracting activity, an evaluation board shall perform the following functions:

(a) Review the current data files on eligible firms and responses to a public notice concerning the particular project (see 36.604).

(b) Evaluate the firms in accordance with the criteria in 36.602-1.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

(d) Prepare a selection report for the agency head or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

36.602-4 Selection authority.

(a) The final selection decision shall be made by the agency head or a designated selection authority.

(b) The selection authority shall review the recommendations of the evaluation board and shall, with the advice of appropriate technical and staff representatives, make the final selection. This final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most highly qualified by the evaluation board, the selection authority shall provide for the contract file a written explanation of the reason for the preference. All firms on the final selection list are considered "selected firms" with which the contracting officer may negotiate in accordance with 36.606.

(c) The selection authority shall not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the selection authority shall record the reasons and return the report through channels to the evaluation board for appropriate revision.

(d) The board shall be promptly informed of the final selection.

36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the simplified acquisition threshold. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.

(a) *Selection by the board.* The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for

the contracting officer to commence negotiations in accordance with 36.606.

(b) *Selection by the chairperson of the board.* When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:

(1) The chairperson of the board shall perform the functions required in 36.602-3.

(2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.

36.603 Collecting data on and appraising firms qualifications.

(a) *Establishing offices.* MMS shall maintain offices or permanent evaluation boards, or arrange to use the offices or boards of other agencies, to receive and maintain data on firms wishing to be considered for Government contracts. Each office or board shall be assigned a jurisdiction by its parent agency, making it responsible for a geographical region or area, or a specialized type of construction.

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the Standard Form 254 (SF 254), "Architect-Engineer and Related Services Questionnaire," and when applicable, the Standard Form 255 (SF 255), "Architect-Engineer and Related Services Questionnaire for Specific Project."

(c) *Data files and the classification of firms.* Under the direction of the parent agency, offices or permanent evaluation boards shall maintain an architect-engineer qualifications data file. These offices or boards shall review the SF's 254 and 255 filed, and shall classify each firm with respect to—

- (1) Location;
- (2) Specialized experience;
- (3) Professional capabilities; and

(4) Capacity, with respect to the scope of work that can be undertaken. A firm's ability and experience in computer-assisted design should be considered, when appropriate.

(d) *Currency of files.* Any office or board maintaining qualifications data files shall review and update each file at least once a year. This process should include:

(1) Encouraging firms to submit annually an updated statement of qualifications and performance data on a SF 254.

(2) Reviewing the SF's 254 and 255 and, if necessary, updating the firm's classification (see 36.603(c)).

(3) Recording any contract awards made to the firm in the past year.

(4) Assuring that the file contains a copy of each pertinent performance report (see 36.604).

(5) Discarding any material that has not been updated within the past three years, if it is no longer pertinent, see 36.604(c).

(6) Posting the date of the review in the file.

(e) *Use of data files.* Evaluation boards and other appropriate Government employees, including contracting officers, shall use data files on firms.

36.604 Performance evaluation.

(a) *Preparation of performance reports.* For each contract of more than \$25,000, performance evaluation reports shall be prepared by the cognizant contracting activity, using the SF 1421, Performance Evaluation (Architect-Engineer). Performance evaluation reports may also be prepared for contracts of \$25,000 or less.

(1) A report shall be prepared after final acceptance of the A&E contract work or after contract termination. Ordinarily, the evaluating official who prepares this report should be the person responsible for monitoring contract performance.

(2) A report may also be prepared after completion of the actual construction of the project.

(3) In addition to the reports in paragraphs (a)(1) and (2) of this section, interim reports may be prepared at any time.

(4) If the evaluating official concludes that a contractor's overall performance was unsatisfactory, the contractor shall be advised in writing that a report of unsatisfactory performance is being prepared and the basis for the report. If the contractor submits any written comments, the evaluating official shall include them in the report, resolve any alleged factual discrepancies, and make appropriate changes in the report.

(5) The head of the contracting activity shall establish procedures which ensure that fully qualified personnel prepare and review performance reports.

(b) *Review of performance reports.* Each performance report shall be reviewed to ensure that it is accurate and fair. The reviewing official should have knowledge of the contractor's performance and should normally be at an organizational level above that of the evaluating official.

(c) *Distribution and use of performance reports.* Each performance report shall be distributed in accordance with agency procedures. The report shall be included in the contract file, and copies shall be sent to offices or boards for filing with the firm's qualifications data (see 36.603(d)(4)). The contracting activity shall retain the report for at least six years after the date of the report.

36.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed \$100,000. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal.

(b) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.

36.606 Negotiations.

(a) Unless otherwise specified by the selection authority, the final selection authorizes the contracting officer to begin negotiations. Negotiations shall be conducted in accordance with Part 15 of this chapter, beginning with the most preferred firm in the final selection (see 15.404-4(c)(4)(i) on fee limitation).

(b) The contracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in 36.209.

(d) During negotiations, the contracting officer should seek advance agreement (see 31.109) on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (e.g., computer-assisted design), the contracting officer should discuss this topic with the firm.

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

(f) If a mutually satisfactory contract cannot be negotiated, the contracting officer shall obtain a written final proposal revision from the firm, and notify the firm that negotiations have been terminated. The contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations

fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.

36.607 Release of information on firm selection.

(a) After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information (see 5.401).

(b) Briefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with 15.503, 15.506(b) through (f), 15.507(c), and 15.506(d)(2) through (d)(5). Note that 15.506(d)(2) through (d)(5) do not apply to architect-engineer contracts.

36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liability and collect the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

36.609 Contract clauses.

36.609-1 Design within funding limitations.

(a) The Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation). If the price of construction proposed in

response to a Government solicitation exceeds the construction funding limitation in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (*e.g.*, if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on construction cost and the Government determines that the firm should not redesign the project, a written statement of the reasons for that determination shall be placed in the contract file.

(b) The amount of the construction funding limitation (to be inserted in paragraph (c) of the clause at 52.236-22) is to be established during negotiations between the contractor and the Government. This estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the contracting officer should make available to the contractor the information upon which the Government has based its initial construction estimate and any subsequently acquired information that may affect the construction costs.

(c) The contracting officer shall insert the clause at 52.236-22, Design Within Funding Limitations, in fixed-price architect-engineer contracts except when—

(1) The head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

36.609-2 Redesign responsibility for design errors or deficiencies.

(a) Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

(b) The contracting officer shall insert the clause at 52.236-23, Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

36.609-3 Work oversight in architect-engineer contracts.

The contracting officer shall insert the clause at 52.236-24, Work Oversight in Architect-Engineer Contracts, in all architect-engineer contracts.

36.609-4 Requirements for registration of designers.

The contracting officer shall insert the clause at 52.236-25, Requirements for Registration of Designers, in architect-engineer contracts, except that it may be omitted from a contract when the design is to be performed—

(a) Outside the United States, its possessions, or Puerto Rico, or

(b) In a State or possession that does not have registration requirements for the particular field involved.

Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements

36.700 Scope of subpart.

This subpart sets forth requirements for the use of standard and optional forms, prescribed in Part 53, for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. These standard and optional forms are illustrated in Part 53.

36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.

(a) Contracting officers shall use Standard Form 1417, Pre-solicitation Notice (Construction Contract), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be \$100,000 or more. This form may also be used if the proposed contract is estimated to be less than \$100,000.

(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the simplified acquisition thresholds, and may be used for contracts at or below the simplified acquisition threshold. In all sealed bid solicitations, or when the Government otherwise requires a noncancellable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.

(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are at or below the simplified acquisition threshold; provided, that the contracting officer includes the clauses required (see Subpart 36.5) in the simplified acquisitions (see Part 13).

(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.

(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of construction contractors as required in 36.201.

36.702 Forms for use in contracting for architect-engineer services.

(a) Contracting officers shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.

(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:

(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.

(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed the simplified acquisition threshold. This form may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.

* * * * *

PART 37—SERVICE CONTRACTING

Sec.

37.000 Scope of part.

Subpart 37.1—Service Contracts—General

- 37.101 Definitions.
- 37.102 Policy.
- 37.103 Contracting officer responsibility.
- 37.104 Personal services contracts.
- 37.105 Competition in service contracting.
- 37.106 Funding and term of service contracts.
- 37.107 Service Contract Act of 1965.
- 37.108 [Reserved]
- 37.109 Services of quasi-military armed forces.
- 37.110 Solicitation provisions and contract clauses.
- 37.111 Extension of services.
- 37.112 Government use of private sector temporaries.
- 37.113 Severance payments to foreign nationals.
- 37.113-1 Waiver of cost allowability limitations.
- 37.113-2 Solicitation provision and contract clause.
- 37.114 Special acquisition requirements.
- 37.115 [Reserved]
- 37.115-1 [Reserved]
- 37.115-2 [Reserved]
- 37.115-3 [Reserved]

Subpart 37.2—Advisory and Assistance Services

- 37.200 Scope of subpart.
- 37.201 Definition.
- 37.202 Exclusions.
- 37.203 Policy.
- 37.204 Guidelines for determining availability of personnel.
- 37.205 Contracting officer responsibilities.

Subpart 37.3—Dismantling, Demolition, or Removal of Improvements

- 37.300 Scope of subpart.
- 37.301 Labor standards.
- 37.302 Bonds or other security.
- 37.303 Payments.
- 37.304 Contract clauses.

Subpart 37.4—Nonpersonal Health Care Services

- 37.400 Scope of subpart.
- 37.401 Policy.
- 37.402 Contracting officer responsibilities.
- 37.403 Contract clause.

Subpart 37.5—Management Oversight of Service Contracts

- 37.500 Scope of subpart.
- 37.501 Definition.
- 37.502 Exclusions.
- 37.503 Agency-head responsibilities.
- 37.504 Contracting officials' responsibilities.

Subpart 37.6—Performance-Based Contracting

- 37.600 Scope of subpart.
- 37.601 General.
- 37.602 Elements of performance-based contracting.
 - 37.602-1 Statements of work.
 - 37.602-2 Quality assurance.
 - 37.602-3 Selection procedures.
 - 37.602-4 Contract type.
 - 37.602-5 Follow-on and repetitive requirements.

This page intentionally left blank.

37.000 Scope of part.

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts for services regardless of the type of contract or kind of service being acquired. This part requires the use of performance-based contracting to the maximum extent practicable and prescribes policies and procedures for use of performance-based contracting methods (see Subpart 37.6). Additional guidance for research and development services is in Part 35; architect-engineering services is in Part 36; information technology is in Part 39; and transportation services is in Part 47. Parts 35, 36, 39, and 47 take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which the Service Contract Act of 1965, as amended, applies (see Subpart 22.10).

Subpart 37.1—Service Contracts—General**37.101 Definitions.**

As used in this part—

“Child care services” means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

“Nonpersonal services contract” means a contract under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

“Service contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- (2) Routine recurring maintenance of real property.
- (3) Housekeeping and base services.
- (4) Advisory and assistance services.
- (5) Operation of Government-owned equipment facilities, and systems.
- (6) Communications services.
- (7) Architect-Engineering (see Subpart 36.6).
- (8) Transportation and related services (see Part 47).

- (9) Research and development (see Part 35).

37.102 Policy.

(a) Performance-based contracting (see Subpart 37.6) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts, agencies must—

(1) Use performance-based contracting methods to the maximum extent practicable, except for—

- (i) Architect-engineer services acquired in accordance with 40 U.S.C. 541-544 (see Part 36);
- (ii) Construction (see Part 36);
- (iii) Utility services (see Part 41); or
- (iv) Services that are incidental to supply purchases; and

(2) Use the following order of precedence (Public Law 106-398, section 821(a));

- (i) A firm-fixed price performance-based contract or task order.
- (ii) A performance-based contract or task order that is not firm-fixed price.
- (iii) A contract or task order that is not performance-based.

(b) Agencies shall generally rely on the private sector for commercial services (see Subpart 7.3).

(c) Agencies shall not award a contract for the performance of an inherently governmental function (see Subpart 7.5).

(d) Non-personal service contracts are proper under general contracting authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed.

(f) Agencies shall establish effective management practices to prevent fraud, waste, and abuse in service contracting.

(g) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

37.103 Contracting officer responsibility.

(a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall—

- (1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions at 2.101 and 37.101 and the guidelines in 37.104;

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with—

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in 37.104(b), and

(iii) Any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that performance-based contracting methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with 42 U.S.C. 13041, as amended, and agency procedures.

37.104 Personal services contracts.

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (*e.g.*, 5 U.S.C.3109) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor

employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (*e.g.*, benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

37.105 Competition in service contracting.

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in 6.401(a) are met, (except see 6.401(b)).

(b) The provisions of statute and Part 6 of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

37.106 Funding and term of service contracts.

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation

except when authorized by law (see paragraph (b) of this section for certain service contracts, 32.703-2 for contracts conditioned upon availability of funds, and 32.703-3 for contracts crossing fiscal years).

(b) Agencies with statutory multiyear authority shall consider the use of this authority to encourage and promote economical business operations when acquiring services.

37.107 Service Contract Act of 1965.

The Service Contract Act of 1965 (41 U.S.C. 351-357) (the Act) provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts. Whether or not the Act applies to a specific service contract will be determined by the definitions and exceptions given in the Act, or implementing regulations.

37.108 [Reserved]

37.109 Services of quasi-military armed forces.

Contracts with “Pinkerton Detective Agencies or similar organizations” are prohibited by 5 U.S.C. 3108. This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract’s character. An organization providing guard or protective services does not thereby become a “quasi-military armed force,” even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524.)

37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.237-1, Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at 52.237-2, Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at 52.237-3, Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See 9.508 regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in MMAR, as appropriate for each acquisition, depending on the conditions that are applicable.

37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see 17.208(f)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR part 300, Subpart E, Use of Private Sector Temporaries, and agency procedures.

37.113 Severance payments to foreign nationals.

37.113-1 Waiver of cost allowability limitations.

(a) The Public Printer, or designee, may waive the 31.205-6(g)(3) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for—

(i) Members of the armed forces stationed or deployed outside the United States, or

(ii) Employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

37.113-2 Solicitation provision and contract clause.

(a) Use the provision at 52.237-8, Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in 37.113-1(a), except for those excluded by 37.113-1(c).

(b) When the Public Printer, or designee, has granted a waiver pursuant to 37.113-1, use the clause at 52.237-9, Waiver of Limitation on Severance Payments to Foreign Nationals.

37.114 Special acquisition requirements.

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of Government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for functions that are not inherently governmental but closely support the performance of inherently governmental functions (see 7.503(c)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

37.115 [Reserved]

37.115-1 [Reserved]

37.115-2 [Reserved]

37.115-3 [Reserved]

Subpart 37.2—Advisory and Assistance Services

37.200 Scope of subpart.

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.

37.201 Definition.

“Covered personnel” means—

(1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity—

- (i) The President;
- (ii) A Member of Congress;
- (iii) A member of the uniformed services;
- (iv) An individual who is an employee under 5 U.S.C. 2105;

(v) The head of a Government-controlled corporation; or

(vi) An adjutant general appointed by the Secretary concerned under 32 U.S.C. 709(c).

(2) A member of the Armed Services of the United States.

(3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

37.202 Exclusions.

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in the Brooks Architect-Engineers Act (Section 901 of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 541).

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

37.203 Policy.

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to 37.205, agencies may contract for advisory and assistance services, when essential to the agency's mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations; or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with 37.204;

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) and the work placed under the FFRDC's contract meets the criteria of 35.017-3; or

(3) Such functions are otherwise authorized by law.

37.204 Guidelines for determining availability of personnel.

(a) The Public Printer shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the Public Printer shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities,

is unable to identify such personnel, the head of the agency may make the determination required by 37.203.

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

37.205 Contracting officer responsibilities.

The contracting officer shall ensure that the determination required in accordance with the guidelines at 37.204 has been made prior to issuing a solicitation.

Subpart 37.3—Dismantling, Demolition, or Removal of Improvements

37.300 Scope of subpart.

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them (hereafter referred to as “dismantling, demolition, or removal of improvements”).

37.301 Labor standards.

Contracts for dismantling, demolition, or removal of improvements are subject to either the Service Contract Act (41 U.S.C. 351-358) or the Davis-Bacon Act (40 U.S.C. 276a-276a-7). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Act applies unless further work which will result in the construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

37.302 Bonds or other security.

When a contract is solely for dismantling, demolition, or removal of improvements, the Miller Act (40 U.S.C. 270a-270f) (see 28.102) does not apply. However, the contracting officer may require the contractor to furnish a performance bond or other security (see 28.103) in an amount that the contracting officer considers adequate to—

- (a) Ensure completion of the work;
- (b) Protect property to be retained by the Government;
- (c) Protect property to be provided as compensation to the contractor; and
- (d) Protect the Government against damage to adjoining property.

37.303 Payments.

- (a) The contract may provide that the—
 - (1) Government pay the contractor for the dismantling or demolition of structures; or
 - (2) Contractor pay the Government for the right to salvage and remove the materials resulting from the dismantling or demolition operation.
- (b) The contracting officer shall consider the usefulness to the Government of all salvageable property. Any of the prop-

erty that is more useful to the Government than its value as salvage to the contractor should be expressly designated in the contract for retention by the Government. The contracting officer shall determine the fair market value of any property not so designated, since the contractor will get title to this property, and its value will therefore be important in determining what payment, if any, shall be made to the contractor and whether additional compensation will be made if the contract is terminated.

37.304 Contract clauses.

(a) The contracting officer shall insert the clause at 52.237-4, Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract. If the contracting officer determines that all material resulting from the dismantling or demolition work is to be retained by the Government, use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at 52.237-5, Payment by Contractor to Government in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) The contracting officer shall insert the clause at 52.237-6, Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if (1) the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (2) the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments. This determination may be appropriate, for example, if it encourages greater competition or participation of small business concerns.

Subpart 37.4—Nonpersonal Health Care Services

37.400 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

37.401 Policy.

MMS may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers using full and open competition procedures. Each contract shall—

(a) State that the contract is a nonpersonal health care services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (*e.g.*, professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237-7, including the maintenance of medical liability insurance.

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparent successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

37.403 Contract clause.

The contracting officer shall insert the clause at 52.237-7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in Part 13.

Subpart 37.5—Management Oversight of Service Contracts

37.500 Scope of subpart.

This subpart establishes responsibilities for management oversight of service contracting.

37.501 Definition.

“Best practices,” as used in this subpart, means techniques that agencies may use to help detect problems in the acquisition, management, and administration of service contracts. Best practices are practical techniques gained from experience that agencies may use to improve the procurement process.

37.502 Exclusions.

- (a) This subpart does not apply to services that are—
- (1) Obtained through personnel appointments and advisory committees;
 - (2) Obtained through personal service contracts authorized by statute;
 - (3) For construction as defined in 2.101; or
 - (4) Obtained through interagency agreements where the work is being performed by in-house Federal employees.
- (b) Services obtained under contracts below the simplified acquisition threshold and services incidental to supply

contracts also are excluded from the requirements of this subpart. However, good management practices and contract administration techniques should be used regardless of the contracting method.

37.503 Agency-head responsibilities.

The Public Printer or designee should ensure that—

- (a) Requirements for services are clearly defined and appropriate performance standards are developed so that the agency’s requirements can be understood by potential offerors and that performance in accordance with contract terms and conditions will meet the agency’s requirements;
- (b) Service contracts are awarded and administered in a manner that will provide the customer its supplies and services within budget and in a timely manner;
- (c) Specific procedures are in place before contracting for services to ensure compliance with the prohibition of contracting out, inherently governmental functions; and
- (d) Strategies are developed and necessary staff training is initiated to ensure effective implementation of the policies in 37.102.

37.504 Contracting officials’ responsibilities.

Contracting officials should ensure that “best practices” techniques are used when contracting for services and in contract management and administration.

Subpart 37.6—Performance-Based Contracting

37.600 Scope of subpart.

This subpart prescribes policies and procedures for use of performance-based contracting methods.

37.601 General.

Performance-based contracting methods are intended to ensure that required performance quality levels are achieved and that total payment is related to the degree that services performed meet contract standards. Performance-based contracts—

- (a) Describe the requirements in terms of results required rather than the methods of performance of the work;
- (b) Use measurable performance standards (*i.e.*, terms of quality, timeliness, quantity, etc.) and quality assurance surveillance plans (see 46.103(a) and 46.401(a));
- (c) Specify procedures for reductions of fee or for reductions to the price of a fixed-price contract when services are not performed or do not meet contract requirements (see 46.407); and
- (d) Include performance incentives where appropriate.

37.602 Elements of performance-based contracting.

37.602-1 Statements of work.

(a) Generally, statements of work shall define requirements in clear, concise language identifying specific work to be accomplished. Statements of work must be individually tailored to consider the period of performance, deliverable items, if any, and the desired degree of performance flexibility (see 11.106). In the case of task order contracts, the statement of work for the basic contract need only define the scope of the overall contract (see 16.504(a)(4)(iii)). The statement of work for each task issued under a task order contract shall comply with paragraph (b) of this subsection. To achieve the maximum benefits of performance-based contracting, task order contracts should be awarded on a multiple award basis (see 16.504(c) and 16.505(b)).

(b) When preparing statements of work, agencies shall, to the maximum extent practicable—

- (1) Describe the work in terms of “what” is to be the required output rather than either “how” the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);
- (2) Enable assessment of work performance against measurable performance standards;

(3) Rely on the use of measurable performance standards and financial incentives in a competitive environment to encourage competitors to develop and institute innovative and cost-effective methods of performing the work; and

(4) Avoid combining requirements into a single acquisition that is too broad for the agency or a prospective contractor to manage effectively.

37.602-2 Quality assurance.

Agencies shall develop quality assurance surveillance plans when acquiring services (see 46.103 and 46.401(a)). These plans shall recognize the responsibility of the contractor (see 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

37.602-3 Selection procedures.

Agencies shall use competitive negotiations when appropriate to ensure selection of services that offer the best value to the Government, cost and other factors considered (see 15.304).

37.602-4 Contract type.

Contract types most likely to motivate contractors to perform at optimal levels shall be chosen (see Subpart 16.1 and, for research and development contracts, see 35.006). To the maximum extent practicable, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see Subpart 16.4). These incentives shall correspond to the specific performance standards in the quality assurance surveillance plan and shall be capable of being measured objectively. Fixed-price contracts are generally appropriate for services that can be defined objectively and for which the risk of performance is manageable (see Subpart 16.1).

37.602-5 Follow-on and repetitive requirements.

When acquiring services that previously have been provided by contract, MMS shall rely on the experience gained from the prior contract to incorporate performance-based contracting methods to the maximum extent practicable. This will facilitate the use of fixed-price contracts for such requirements for services. (See 7.105 for requirement to address performance-based contracting strategies in acquisition plans. See also 16.104(k).)

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

Sec.

38.000 Scope of part.

Subpart 38.1—Federal Supply Schedule Program

38.101 General.

Subpart 38.2—Establishing and Administering Federal Supply Schedules

38.201 Coordination requirements.

This page intentionally left blank.

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (see Subpart 8.4, Federal Supply Schedules, for additional information). The Department of Defense uses a similar system of schedule contracting for military items that are also not a part of the Federal Supply Schedule program.

Subpart 38.1—Federal Supply Schedule Program**38.101 General.**

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3)(A), provides Federal agencies with a simplified process of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a

stated geographic area such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (*e.g.*, Parts 5, 6, and 19). The requirements of Parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule solicitation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

Subpart 38.2—Establishing and Administering Federal Supply Schedules

38.201 Coordination requirements.

(a) Subject to interagency agreements, contracting officers having responsibility for awarding Federal Supply Schedule contracts shall coordinate and obtain approval of the General Services Administration's Federal Supply Service (FSS) before—

- (1) Establishing new schedules;

- (2) Discontinuing existing schedules;
- (3) Changing the scope of agency or geographical coverage of existing schedules; or
- (4) Adding or deleting special item numbers, national stock numbers, or revising their description.

(b) Requests should be forwarded to the:

General Services Administration
Federal Supply Service
Office of Acquisition (FC)
Washington, DC 20406.

* * * * *

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

Sec.

39.000 Scope of part.
39.001 Applicability.
39.002 Definitions.

Subpart 39.1—General

39.101 Policy.
39.102 Management of risk.
39.103 Modular contracting.
39.104 Information technology services.
39.105 Privacy.

39.106 Year 2000 compliance.
39.107 Contract clause.

Subpart 39.2—Electronic and Information Technology

39.201 Scope of subpart.
39.202 Definition.
39.203 Applicability.
39.204 Exceptions.

This page intentionally left blank.

39.000 Scope of part.

This part prescribes acquisition policies and procedures for use in acquiring—

- (a) Information technology, including financial management systems, consistent with other parts of this regulation.
- (b) Information and information technology.

39.001 Applicability.

This part applies to the acquisition of information technology by or for the use of agencies except for acquisitions of information technology for national security systems.

39.002 Definitions.

As used in this part—

“Modular contracting” means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

“National security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

- (1) Involves intelligence activities;
- (2) Involves cryptologic activities related to national security;
- (3) Involves command and control of military forces;
- (4) Involves equipment that is an integral part of a weapon or weapons system; or
- (5) Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

“Year 2000 compliant,” with respect to information technology, means that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

Subpart 39.1—General**39.101 Policy.**

(a) Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105-277) requires that agencies may not use appropriated funds to acquire information technology that does not comply with 39.106.

(b) In acquiring information technology, agencies shall identify their requirements, including consideration of security of resources, protection of privacy, national security and

emergency preparedness, accommodations for individuals with disabilities, and energy efficiency. When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see Part 10) and the application of technology refreshment techniques.

39.102 Management of risk.

(a) Prior to entering into a contract for information technology, an agency should analyze risks, benefits, and costs. (See Part 7 for additional information regarding requirements definition.) Reasonable risk taking is appropriate as long as risks are controlled and mitigated. Contracting and program office officials are jointly responsible for assessing, monitoring and controlling risk when selecting projects for investment and during program implementation.

(b) Types of risk may include schedule risk, risk of technical obsolescence, cost risk, risk implicit in a particular contract type, technical feasibility, dependencies between a new project and other projects or systems, the number of simultaneous high risk projects to be monitored, funding availability, and program management risk.

(c) Appropriate techniques should be applied to manage and mitigate risk during the acquisition of information technology. Techniques include, but are not limited to: prudent project management; use of modular contracting; thorough acquisition planning tied to budget planning by the program, finance and contracting offices; continuous collection and evaluation of risk-based assessment data; prototyping prior to implementation; post implementation reviews to determine actual project cost, benefits and returns; and focusing on risks and returns using quantifiable measures.

39.103 Modular contracting.

(a) Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Government’s need for timely access to rapidly changing technology. Consistent with the agency’s information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see 2.101) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

- (1) Are easier to manage individually than would be possible in one comprehensive acquisition;
- (2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appropriate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to Parts 16 and 17 of the Federal Acquisition Regulation, contracting officers shall select the contract type and method appropriate to the circumstances (*e.g.*, indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with 14.209 or 15.206(e). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless

the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based contract (see Subpart 37.6).

39.105 Privacy.

Agencies shall ensure that contracts for information technology address protection of privacy in accordance with Part 24. In addition, each agency shall ensure that contracts for the design, development, or operation of a system of records using commercial information technology services or information technology support services include the following:

(a) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

39.106 Year 2000 compliance.

When acquiring information technology that will be required to perform date/time processing involving dates subsequent to December 31, 1999, agencies shall ensure that solicitations and contracts—

(a)(1) Require the information technology to be Year 2000 compliant; or

(2) Require that non-compliant information technology be upgraded to be Year 2000 compliant prior to the earlier of—

(i) The earliest date on which the information technology may be required to perform date/time processing involving dates later than December 31, 1999, or

(ii) December 31, 1999; and

(b) As appropriate, describe existing information technology that will be used with the information technology to be acquired and identify whether the existing information technology is Year 2000 compliant.

39.107 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at 52.239-1, Privacy or Security Safeguards, in solicitations and contracts for information technology which require security of information technology, and/or are for the design, development, or operation of a system of records using commercial information technology services or support services.

Subpart 39.2—Electronic and Information Technology

39.201 Scope of subpart.

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

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

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

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

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

39.202 Definition.

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

39.203 Applicability.

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

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

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

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

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

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

39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that—

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to October 1, 2004. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

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

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

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

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

(i) The difficulty or expense of compliance; and

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

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

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

* * * * *

MATERIALS MANAGEMENT ACQUISITION REGULATION

PART 40—RESERVED

This page intentionally left blank.

PART 41—ACQUISITION OF UTILITY SERVICES

Sec.

Subpart 41.1—General		Subpart 41.4—Administration	
41.100	Scope of part.	41.401	Monthly and annual review.
41.101	Definitions.	41.402	Rate changes and regulatory intervention.
41.102	Applicability.		
41.103	Statutory and delegated authority.		
Subpart 41.2—Acquiring Utility Services		Subpart 41.5—Solicitation Provision and Contract Clauses	
41.201	Policy.	41.501	Solicitation provision and contract clauses.
41.202	Procedures.		
41.203	GSA assistance.		
41.204	GSA areawide contracts.		
41.205	Separate contracts.		
41.206	Interagency agreements.		
Subpart 41.3—Requests for Assistance		Subpart 41.6—Forms	
41.301	Requirements.	41.601	Utility services forms.
		Subpart 41.7—Formats	
		41.701	Formats for utility service specifications.
		41.702	Formats for annual utility service review.

This page intentionally left blank.

Subpart 41.1—General

41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See 41.102(b) for services that are excluded from this part.)

41.101 Definitions.

As used in this part,

“Areawide contract” means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an “Authorization” form for requesting service, connection, disconnection, or change in service.

“Authorization” means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

“Connection charge” means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

“Delegated agency” means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see 41.103(b)).

“Federal Power and Water Marketing Agency” means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

“Franchise territory” means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

“Intervention” means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

“Multiple service locations” means the various locations or delivery points in the utility supplier's service area to which it provides service under a single contract.

“Rates” may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, *e.g.*, facilities use charges.

“Separate contract” means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

“Termination liability” means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Gov-

ernment terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see “Connection charge”).

“Utility service” means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of Part 41 to other services (*e.g.*, rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the Service Contract Act of 1965 (see 37.107).

41.102 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see 41.206);

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency's marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility's own distribution system, or construction/maintenance of Government-owned facilities; or

(7) Third party financed shared-savings projects authorized by 42 U.S.C. 8287. However, agencies may utilize Part 41 for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under 42 U.S.C. 8287 for periods not to exceed 25 years.

41.103 Statutory and delegated authority.

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by section 201 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 481), to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by section 201 of the Act to contract for utility services for periods not exceeding ten years.

(b) *Delegated authority.* Other agencies requiring utility service contracts for periods over one year, but not exceeding

ten years, may request a delegation of authority from GSA at the address specified in 41.301(a). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

- (1) An established acquisition program;
- (2) Personnel technically qualified to deal with specialized utilities problems; and
- (3) The ability to accomplish its own pre-award contract review.

Subpart 41.2—Acquiring Utility Services

41.201 Policy.

(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.

(b) Except for acquisitions at or below the simplified acquisition threshold, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the

agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.

(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, *e.g.*, consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers shall provide a representation that service can be provided in a manner consistent with section 8093 of Public Law 100-202 (see 41.201(d)).

41.202 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with Parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with Parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law governing the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term “entire utility service” includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.

(b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:

(1) GSA areawide contracts (see 41.204).

(2) Separate contracts (see 41.205).

(3) Interagency agreements (see 41.206).

(c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal

and the record of negotiations, to GSA at the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—

(1) By issuing a purchase order in accordance with 13.302; or

(2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.

(d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:

(1) The unsigned, tendered contract and any related letter of transmittal.

(2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).

(3) Services to be furnished and the estimated annual cost.

(4) Historical record of any applicable connection charges.

(5) Historical record of any applicable ongoing capital credits.

(6) A copy of the applicable rate schedule.

(e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract.

41.203 GSA assistance.

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

(b) Agencies, seeking assistance shall provide upon request by GSA the information listed in 41.301.

41.204 GSA areawide contracts.

(a) *Purpose.* GSA enters into areawide contracts (see 41.101) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.

(b) *Features.* (1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.

(2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.

(3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41.201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of paragraph (c)(1) of this section apply.

(c) *Procedures for obtaining service.* (1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—

(i) Service is available from more than one supplier, or

(ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government. If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41.202(a)). The determination required by paragraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41.301(a).

(2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.

(3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed

maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.

(d) *List of areawide contracts.* A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.

(e) *Notification.* Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 Separate contracts.

(a) In the absence of an areawide contract or interagency agreement (see 41.206), MMS shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.

(b) If MMS enters into a separate contract, the contracting officer shall document the contract file with the following information:

- (1) The number of available suppliers.
- (2) Any special equipment, service reliability, or facility requirements and related costs.
- (3) The utility supplier's rates, connection charges, and termination liability.
- (4) Total estimated contract value (including costs in paragraphs (b)(2) and (3) of this subsection).

(5) Any technical or special contract terms required.

(6) Any unusual characteristics of services required.

(7) The utility's wheeling or transportation policy for utility service.

(c) If requesting GSA assistance with a separate contract, the requesting agency shall furnish the technical and acquisition data specified in 41.205(b), 41.301, and such other data as GSA may deem necessary.

(d) A contract exceeding a 1-year period, but not exceeding ten years (except pursuant to 41.103), may be justified, and is usually required, where any of the following circumstances exist:

(1) The Government will obtain lower rates, larger discounts, or more favorable terms and conditions of service.

(2) A proposed connection charge, termination liability, or any other facilities charge to be paid by the Federal Government will be reduced or eliminated;

(3) The utility service supplier refuses to render the desired service except under a contract exceeding a 1-year period.

41.206 Interagency agreements.

MMS shall use interagency agreements (*e.g.*, consolidated purchase, joint use, or cross-service agreements) when acquiring utility service or facilities from other Government agencies and shall comply with the policies and procedures at Subpart 17.5, Interagency Acquisitions under the Economy Act.

Subpart 41.3—Requests for Assistance

41.301 Requirements.

(a) Requests for delegations of GSA contracting authority assistance with a proposed contract as provided in 41.203, and the submission of other information required by this part, shall be sent or submitted to the General Services Administration (GSA) region in which service is required. The names and locations of GSA regional offices are available from the:

Public Utilities Division (PPU)
Public Buildings Service
Washington DC 20405.

(b) Requests for contracting assistance for utility services shall be sent not later than 120 days prior to the date new services are required to commence or an existing contract will expire. Requests for assistance shall contain the following information:

(1) A technical description or specification of the type, quantity, and quality of service required, and a delivery schedule.

(2) A copy of any service proposal or proposed contract.

(3) Copies of all current published or unpublished rates of the utility supplier.

(4) Identification of any unusual factors affecting the acquisition.

(5) Identification of all available sources or methods of supply, an analysis of the cost-effectiveness of each, and a statement of the ability of each source to provide the required service, including the location and a description of each available supplier's facilities at the nearest point of service, and the cost of providing or obtaining necessary backup and other ancillary services.

(c) For new utility service requirements, the agency shall furnish the information in paragraph (a) of this section and the following as applicable:

(1) The date initial service is required.

(2) For the first 12 months of full service, estimated maximum demand, monthly consumption, other pertinent information (*e.g.*, demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(3) Known or estimated time schedule for growth to ultimate requirements.

(4) Estimated ultimate maximum demand and ultimate monthly consumption.

(5) A simple schematic diagram or line drawing showing the meter locations, the location of the new utility facilities to be constructed on Federal property by the Federal agency, and any required new connection facilities on either side of the delivery point to be constructed by the utility supplier to provide the new services.

(6) Accounting and appropriation data to cover the required utility services and any connection charges required to be paid by the agency receiving such utility services.

(7) The following data concerning proposed facilities and related charges or costs:

(i) Proposed refundable or nonrefundable connection charge, termination liability, or other facilities charge to be paid by the agency, together with a description of the supplier's proposed facilities and estimated construction costs, and its rationale for the charge, *e.g.*, tariff provisions or policies.

(ii) A copy of the acquiring agency's estimate to make its own connection to the supplier's facilities through use of its own resources or by separate contract. When feasible, the acquiring agency shall provide its estimates to construct and operate its own utility facilities in lieu of participating in a cost-sharing construction program with the proposed utility supplier.

(d) For existing utility service, the agency shall furnish GSA the information in paragraph (b) of this section and the following, as applicable:

(1) A copy of the most recent 12-months' service invoices.

(2) A tabulation, by month, for the most recent 12 months, showing the actual utility demands, consumption, connection charges, fuel adjustment charges, and the average monthly cost per unit of consumption.

(3) An estimate, by month, for the next 12 months, showing the estimated maximum demands, monthly consumption, other pertinent information (*e.g.*, demand side management, load or energy management, peak shaving, on site generation, load shaping), and annual cost of the service.

(4) Accounting and appropriation data to cover the costs for the continuation of utility services.

(5) A statement noting whether the transformer, or other system components, on either side of the delivery point are owned by the Federal agency or the utility supplier, and if the metering is on the primary or secondary side of the transformer.

Subpart 41.4—Administration

41.401 Monthly and annual review.

Agencies shall review utility service invoices on a monthly basis and all utility accounts with annual values exceeding the simplified acquisition threshold on an annual basis. Annual reviews of accounts with annual values at or below the simplified acquisition threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.

41.402 Rate changes and regulatory intervention.

(a) When a change is proposed to rates or terms and conditions of service to the Government, the agency shall promptly determine whether the proposed change is reasonable, justified, and not discriminatory.

(b) If a change is proposed to rates or terms and conditions of service that may be of interest to other Federal agencies, and intervention before a regulatory body is considered justified, the matter shall be referred to GSA. The agency may request from GSA a delegation of authority for the agency to intervene on behalf of the consumer interests of the Federal executive agencies (see 41.301).

(c) Pursuant to 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, if a regulatory body approves a rate change, any rate change shall be made a part of the contract by unilateral contract modification or otherwise documented in accordance with agency procedures. The approved applicable rate shall be effective on the date determined by the regulatory body and resulting rates and charges shall be paid promptly to avoid late payment provisions. Copies of the modification containing the approved rate change shall be sent to the agency's paying office or office responsible for verifying billed amounts (see 41.401).

(d) If the utility supplier is not regulated and the rates, terms, and conditions of service are subject to negotiation pursuant to the clause at 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, any rate change shall be made a part of the contract by contract modification, with copies sent to the agency's paying office or office responsible for verifying billed amounts.

Subpart 41.5—Solicitation Provision and Contract Clauses

41.501 Solicitation provision and contract clauses.

(a) Because the terms and conditions under which utility suppliers furnish service may vary from area to area, the differences may influence the terms and conditions appropriate to a particular utility's contracting situation. To accommodate requirements that are peculiar to the contracting situation, this section prescribes provisions and clauses on a "substantially the same as" basis (see 52.101) which permits the contracting officer to prepare and utilize variations of the prescribed provision and clauses in accordance with agency procedures.

(b) The contracting officer shall insert in solicitations for utility services a provision substantially the same as the provision at 52.241-1, Electric Service Territory Compliance Representation, when proposals from alternative electric suppliers are sought.

(c) The contracting officer shall insert in solicitations and contracts for utility services clauses substantially the same as the clauses at—

- (1) 52.241-2, Order of Precedence—Utilities;
- (2) 52.241-3, Scope and Duration of Contract;
- (3) 52.241-4, Change in Class of Service;
- (4) 52.241-5, Contractor's Facilities; and
- (5) 52.241-6, Service Provisions.

(d) The contracting officer shall insert clauses substantially the same as the clauses listed below in solicitations and contracts under the prescribed conditions—

(1) 52.241-7, Change in Rates or Terms and Conditions of Service for Regulated Services, when the utility services are subject to a regulatory body. (Except for GSA areawide contracts, the contracting officer shall insert in the blank space provided in the clause the name of the contracting officer. For GSA areawide contracts, the contracting officer shall insert the following: "GSA and each areawide customer with annual billings that exceed \$250,000").

(2) 52.241-8, Change in Rates or Terms and Conditions of Service for Unregulated Services, when the utility services are not subject to a regulatory body.

(3) 52.241-9, Connection Charge, when a refundable connection charge is required to be paid by the Government to compensate the contractor for furnishing additional facilities necessary to supply service. (Use Alternate I to the clause if a nonrefundable charge is to be paid. When conditions require the incorporation of a nonrecurring, nonrefundable service charge or a termination liability, see paragraphs (d)(6) and (d)(4) of this section).

(4) 52.241-10, Termination Liability, when payment is to be made to the contractor upon termination of service in conjunction with or in lieu of a connection charge upon completion of the facilities.

(5) 52.241-11, Multiple Service Locations (as defined in 41.101), when providing for possible alternative service locations, except under areawide contracts, is required.

(6) 52.241-12, Nonrefundable, Nonrecurring Service Charge, when the Government is required to pay a nonrefundable, nonrecurring membership fee, a charge for initiation of service, or a contribution for the cost of facilities construction. The Government may provide for inclusion of such agreed amount or fee as a part of the connection charge, a part of the initial payment for services, or as periodic payments to fulfill the Government's obligation.

(7) 52.241-13, Capital Credits, when the Federal Government is a member of a cooperative and is entitled to capital credits, consistent with the bylaws and governing documents of the cooperative.

(e) Depending on the conditions that are appropriate for each acquisition, the contracting officer shall also insert in solicitations and contracts for utility services the provisions and clauses prescribed elsewhere in the MMAR.

Subpart 41.6—Forms**41.601 Utility services forms.**

(a) If acquiring utility services under other than an areawide contract, a purchase order or an interagency agreement, the Standard Form (SF) 33, Solicitation, Offer and

Award; SF 26, Award/Contract; or SF 1447, Solicitation/Contract, shall be used.

(b) The contracting officer shall incorporate the applicable rate schedule in each contract, purchase order or modification.

Subpart 41.7—Formats

41.701 Formats for utility service specifications.

(a) The following specification formats for use in acquiring utility services are available from the address specified at 41.301(a) and may be used and modified at the agency’s discretion:

- (1) Electric service.
- (2) Water service.
- (3) Steam service.
- (4) Sewage service.
- (5) Natural gas service.

(b) Contracting officers may modify the specification format referenced in paragraph (a) of this section and attach technical items, details on Government ownership of facilities and maintenance or repair obligations, maps or drawings of deliv-

ery points, and other information deemed necessary to fully define the service conditions.

(c) The specifications and attachments (see paragraph (b) of this section) shall be inserted in Section C of the utility service solicitation and contract.

41.702 Formats for annual utility service review.

(a) Formats for use in conducting annual reviews of the following utility services are available from the address specified at 41.301(a) and may be used at the agency’s discretion:

- (1) Electric service.
- (2) Gas service.
- (3) Water and sewage service.

(b) Contracting officers may modify the annual utility service review format as necessary to fully cover the service used.

* * * * *

**MATERIALS MANAGEMENT ACQUISITION
REGULATION**

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

- 42.000 Scope of part.
 - 42.001 [Reserved]
 - 42.002 Interagency agreements.
 - 42.003 Cognizant Federal agency.
- Subpart 42.1—Contract Audit Services**
- 42.101 Contract audit responsibilities.
 - 42.102 Assignment of contract audit services.
 - 42.103 Contract audit services directory.
- Subpart 42.2—Contract Administration Services**
- 42.201 Contract administration responsibilities.
 - 42.202 Assignment of contract administration.
 - 42.203 Contract administration services directory.
- Subpart 42.3—Contract Administration Office Functions**
- 42.301 General.
 - 42.302 Contract administration functions.
- Subpart 42.4—Correspondence and Visits**
- 42.401 Contract correspondence.
 - 42.402 Visits to contractors' facilities.
 - 42.403 Evaluation of contract administration offices.
- Subpart 42.5—Postaward Orientation**
- 42.500 Scope of subpart.
 - 42.501 General.
 - 42.502 Selecting contracts for postaward orientation.
 - 42.503 Postaward conferences.
 - 42.503-1 Postaward conference arrangements.
 - 42.503-2 Postaward conference procedure.
 - 42.503-3 Postaward conference report.
 - 42.504 Postaward letters.
 - 42.505 Postaward subcontractor conferences.
- Subpart 42.6—Corporate Administrative Contracting Officer**
- 42.601 General.
 - 42.602 Assignment and location.
 - 42.603 Responsibilities.
- Subpart 42.7—Indirect Cost Rates**
- 42.700 Scope of subpart.
 - 42.701 Definition.
 - 42.702 Purpose.
 - 42.703 General.
 - 42.703-1 Policy.
 - 42.703-2 Certificate of indirect costs.
 - 42.704 Billing rates.
 - 42.705 Final indirect cost rates.
 - 42.705-1 Contracting officer determination procedure.
 - 42.705-2 Auditor determination procedure.
 - 42.705-3 Educational institutions.
 - 42.705-4 State and local governments.
 - 42.705-5 Nonprofit organizations other than educational and state and local governments.
 - 42.706 Distribution of documents.
 - 42.707 Cost-sharing rates and limitations on indirect cost rates.
 - 42.708 Quick-closeout procedure.
 - 42.709 [Reserved]
 - 42.709-1 [Reserved]
 - 42.709-2 Responsibilities
 - 42.709-3 [Reserved]
 - 42.709-4 Computing interest.
 - 42.709-5 [Reserved]
 - 42.709-6 [Reserved]
- Subpart 42.8—Disallowance of Costs**
- 42.800 Scope of subpart.
 - 42.801 Notice of intent to disallow costs.
 - 42.802 Contract clause.
 - 42.803 Disallowing costs after incurrence.
- Subpart 42.9—Bankruptcy**
- 42.900 Scope of subpart.
 - 42.901 General.
 - 42.902 Procedures.
 - 42.903 Solicitation provision and contract clause.
- Subpart 42.10—[Reserved]**
- Subpart 42.11—Production Surveillance and Reporting**
- 42.1101 General.
 - 42.1102 Applicability.
 - 42.1103 Policy.
 - 42.1104 Surveillance requirements.
 - 42.1105 Assignment of criticality designator.
 - 42.1106 Reporting requirements.
 - 42.1107 Contract clause.
- Subpart 42.12—Novation and Change-of-Name Agreements**
- 42.1200 Scope of subpart.
 - 42.1201 [Reserved]
 - 42.1202 Responsibility for executing agreements.
 - 42.1203 Processing agreements.
 - 42.1204 Applicability of novation agreements.
 - 42.1205 Agreement to recognize contractor's change of name.
- Subpart 42.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work**
- 42.1301 General.
 - 42.1302 Suspension of work.
 - 42.1303 Stop-work orders.
 - 42.1304 Government delay of work.

42.1305 Contract clauses.

Subpart 42.15—Contractor Performance Information

Subpart 42.14—Traffic and Transportation Management

42.1401 General.

42.1500 Scope of subpart.

42.1402 Volume movements within the continental United States.

42.1501 General.

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

42.1502 Policy.

42.1503 Procedures.

42.1404 Shipments by parcel post or other classes of mail.

Subpart 42.16—Small Business Contract Administration

42.1404-1 Parcel post eligible shipments.

42.1601 General.

42.1404-2 Contract clauses.

42.1405 Discrepancies incident to shipment of supplies.

42.1406 Report of shipment (REPSHIP).

Subpart 42.17—Forward Pricing Rate Agreements

42.1406-1 Advance notice.

42.1701 Procedures.

42.1406-2 Contract clause.

42.000 Scope of part.

This part prescribes policies and procedures for assigning and performing contract administration and contract audit services.

42.001 [Reserved]**42.002 Interagency agreements.**

(a) Agencies shall avoid duplicate audits, reviews, inspections, and examinations of contractors or subcontractors, by more than one agency, through the use of interagency agreements.

(b) Subject to the fiscal regulations of the agencies and applicable interagency agreements, the requesting agency shall reimburse the servicing agency for rendered services in accordance with the Economy Act (31 U.S.C. 1535).

(c) When an interagency agreement is established, the agencies are encouraged to consider establishing procedures for the resolution of issues that may arise under the agreement.

42.003 Cognizant Federal agency.

(a) For contractors other than educational institutions and nonprofit organizations, the cognizant Federal agency normally will be the agency with the largest dollar amount of negotiated contracts, including options. For educational institutions and nonprofit organizations, the cognizant Federal agency is established according to Subsection G.11 of OMB Circular A-21, Cost Principles for Educational Institutions, and Attachment A, Subsection E.2, of OMB Circular A-122, Cost Principles for Nonprofit Organizations, respectively.

(b) Once a Federal agency assumes cognizance for a contractor, it should remain cognizant for at least 5 years to ensure continuity and ease of administration. If, at the end of the 5-year period, another agency has the largest dollar amount of negotiated contracts, including options, the two agencies shall coordinate and determine which will assume cognizance. However, if circumstances warrant it and the affected agencies agree, cognizance may transfer prior to the expiration of the 5-year period.

Subpart 42.1—Contract Audit Services**42.101 Contract audit responsibilities.**

(a) The auditor is responsible for—

(1) Submitting information and advice to the requesting activity, based on the auditor's analysis of the contractor's financial and accounting records or other related data as to the acceptability of the contractor's incurred and estimated costs;

(2) Reviewing the financial and accounting aspects of the contractor's cost control systems; and

(3) Performing other analyses and reviews that require access to the contractor's financial and accounting records supporting proposed and incurred costs.

(b) Normally, for contractors other than educational institutions and nonprofit organizations, the Defense Contract Audit Agency (DCAA) is the responsible Government audit agency. However, there may be instances where an agency other than DCAA desires cognizance of a particular contractor. In those instances, the two agencies shall agree on the most efficient and economical approach to meet contract audit requirements. For educational institutions and nonprofit organizations, audit cognizance will be determined according to the provisions of OMB Circular A-133, Audits of Institutions of Higher Education and Other Non-Profit Institutions.

42.102 Assignment of contract audit services.

(a) Contracting officers may request audit services directly from the responsible audit agency cited in the Directory of Federal Contract Audit Offices. The audit request should include a suspense date and should identify any information needed by the contracting officer.

(b) The responsible audit agency may decline requests for services on a case-by-case basis, if resources of the audit agency are inadequate to accomplish the tasks. Declinations shall be in writing.

(c) Contracting Officers may request audit services from the GPO Inspector General.

42.103 Contract audit services directory.

(a) DCAA maintains and distributes the Directory of Federal Contract Audit Offices. The directory identifies cognizant audit offices and the contractors over which they have cognizance. Changes to audit cognizance shall be provided to DCAA so that the directory can be updated.

(b) Agencies may obtain a copy of the directory or information concerning cognizant audit offices by contacting the—

Defense Contract Audit Agency
ATTN: CMO
Publications Officer
8725 John J. Kingman Road
Suite 2135
Fort Belvoir, VA 22060-6219.

Subpart 42.2—Contract Administration Services

42.201 Contract administration responsibilities.

(a) For each contract assigned for administration, the contract administration office (CAO) (see 2.101) shall—

(1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for the functions specifically withheld;

(2) Perform the functions listed in 42.302(b) only when and to the extent specifically authorized by the contracting officer; and

(3) Request supporting contract administration under 42.202(e) and (f) when it is required.

(b) The Defense Contract Management Agency and other agencies offer a wide variety of contract administration and support services.

42.202 Assignment of contract administration.

(a) *Delegating functions.* As provided in agency procedures, contracting officers may delegate contract administration or specialized support services, either through interagency agreements or by direct request to the cognizant CAO listed in the Federal Directory of Contract Administration Services Components. The delegation should include—

(1) The name and address of the CAO designated to perform the administration (this information also shall be entered in the contract);

(2) Any special instructions, including any functions withheld or any specific authorization to perform functions listed in 42.302(b);

(3) A copy of the contract to be administered; and

(4) Copies of all contracting agency regulations or directives that are—

(i) Incorporated into the contract by reference; or

(ii) Otherwise necessary to administer the contract, unless copies have been provided previously.

(b) *Special instructions.* As necessary, the contracting officer also shall advise the contractor (and other activities as appropriate) of any functions withheld from or additional functions delegated to the CAO.

(c) *Delegating additional functions.* For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302, provided that—

(1) Prior coordination with the CAO ensures the availability of required resources;

(2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and

(3) The delegation does not require the CAO to undertake new or follow-on acquisitions.

(d) *Rescinding functions.* The contracting officer at the requesting agency may rescind or recall a delegation to administer a contract or perform a contract administration function, except for functions pertaining to cost accounting standards and negotiation of forward pricing rates and indirect cost rates (also see 42.003). The requesting agency must coordinate with the ACO to establish a reasonable transition period prior to rescinding or recalling the delegation.

(e) *Secondary delegations of contract administration.* (1) A CAO that has been delegated administration of a contract under paragraph (a) or (c) of this section, or a contracting office retaining contract administration, may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—

(i) Be in writing;

(ii) Clearly state the specific functions to be performed; and

(iii) Be accompanied by a copy of pertinent contractual and other necessary documents.

(2) The prime contractor is responsible for managing its subcontracts. The CAO's review of subcontracts is normally limited to evaluating the prime contractor's management of the subcontracts (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—

(i) The Government otherwise would incur undue cost;

(ii) Successful completion of the prime contract is threatened; or

(iii) It is authorized under paragraph (f) of this section or elsewhere in this regulation.

(f) *Special surveillance.* For major system acquisitions (see Part 34), the contracting officer may designate certain high risk or critical subsystems or components for special surveillance in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner consistent with the policy of requesting that the cognizant CAO perform contract administration functions at a contractor's facility (see 42.002).

(g) *Refusing delegation of contract administration.* An agency may decline a request for contract administration services on a case-by-case basis if resources of the agency are inadequate to accomplish the tasks. Declinations shall be in writing.

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains and distributes the Federal Directory of Contract

Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may obtain a free copy of the directory on disk by writing to—

Defense Contract Management Agency
ATTN: DCMA-FBP
8725 John J. Kingman Road
Fort Belvoir, VA 22060-6221,

or access it on the Internet at <http://www.dcm.mil/casbook/casbook.htm>.

Subpart 42.3—Contract Administration Office Functions

42.301 General.

When a contract is assigned for administration under Subpart 42.2, the contract administration office (CAO) shall perform contract administration functions in accordance with MMAR, the contract terms, and, unless otherwise agreed to in an interagency agreement (see 42.002), the applicable regulations of the servicing agency.

42.302 Contract administration functions.

(a) The contracting officer normally delegates the following contract administration functions to a CAO. The contracting officer may retain any of these functions, except those in paragraphs (a)(5), (a)(9), and (a)(11) of this section, unless the cognizant Federal agency (see 2.101) has designated the contracting officer to perform these functions.

- (1) Review the contractor's compensation structure.
- (2) Review the contractor's insurance plans.
- (3) Conduct post-award orientation conferences.
- (4) Review and evaluate contractors' proposals under Subpart 15.4 and, when negotiation will be accomplished by the contracting officer, furnish comments and recommendations to that officer.
- (5) Negotiate forward pricing rate agreements (see 15.407-3).
- (6) Negotiate advance agreements applicable to treatment of costs under contracts currently assigned for administration (see 31.109).
- (7) Determine the allowability of costs suspended or disapproved as required (see Subpart 42.8), direct the suspension or disapproval of costs when there is reason to believe they should be suspended or disapproved, and approve final vouchers.
- (8) Issue Notices of Intent to Disallow or not Recognize Costs (see Subpart 42.8).
- (9) Establish final indirect cost rates and billing rates for those contractors meeting the criteria for contracting officer determination in Subpart 42.7.
- (10) Attempt to resolve issues in controversy, using ADR procedures when appropriate (see Subpart 33.2); prepare findings of fact and issue decisions under the Disputes clause on matters in which the administrative contracting officer (ACO) has the authority to take definitive action.
- (11) In connection with Cost Accounting Standards (see 30.601 and 48 CFR Chapter 99 (FAR Appendix))—

(i) Determine the adequacy of the contractor's disclosure statements;

(ii) Determine whether disclosure statements are in compliance with Cost Accounting Standards and Part 31;

(iii) Determine the contractor's compliance with Cost Accounting Standards and disclosure statements, if applicable; and

(iv) Negotiate price adjustments and execute supplemental agreements under the Cost Accounting Standards clauses at 52.230-2, 52.230-3, 52.230-4, 52.230-5, and 52.230-6.

(12) Review and approve or disapprove the contractor's requests for payments under the progress payments or performance-based payments clauses.

(13) Make payments on assigned contracts when prescribed in agency acquisition regulations.

(14) Manage special bank accounts.

(15) Ensure timely notification by the contractor of any anticipated overrun or underrun of the estimated cost under cost-reimbursement contracts.

(16) Monitor the contractor's financial condition and advise the contracting officer when it jeopardizes contract performance.

(17) Analyze quarterly limitation on payments statements and recover overpayments from the contractor.

(18) Issue tax exemption forms.

(19) Ensure processing and execution of duty-free entry certificates.

(20) For classified contracts, administer those portions of the applicable industrial security program delegated to the CAO (see Subpart 4.4).

(21) Issue work requests under maintenance, overhaul, and modification contracts.

(22) Negotiate prices and execute supplemental agreements for spare parts and other items selected through provisioning procedures when prescribed by agency acquisition regulations.

(23) Negotiate and execute contractual documents for settlement of partial and complete contract terminations for convenience, except as otherwise prescribed by Part 49.

(24) Negotiate and execute contractual documents settling cancellation charges under multiyear contracts.

(25) Process and execute novation and change of name agreements under Subpart 42.12.

(26) Perform property administration (see Part 45).

(27) Approve contractor acquisition or fabrication of special test equipment under the clause at 52.245-18, Special Test Equipment.

(28) Perform necessary screening, redistribution, and disposal of contractor inventory.

(29) Issue contract modifications requiring the contractor to provide packing, crating, and handling services on excess Government property. When the ACO determines it to be in the Government's interests, the services may be secured from a contractor other than the contractor in possession of the property.

(30) In facilities contracts—

(i) Evaluate the contractor's requests for facilities and for changes to existing facilities and provide appropriate recommendations to the contracting officer;

(ii) Ensure required screening of facility items before acquisition by the contractor;

(iii) Approve use of facilities on a noninterference basis in accordance with the clause at 52.245-9, Use and Charges;

(iv) Ensure payment by the contractor of any rental due; and

(v) Ensure reporting of items no longer needed for Government production.

(31) Perform production support, surveillance, and status reporting, including timely reporting of potential and actual slippages in contract delivery schedules.

(32) Perform preaward surveys (see Subpart 9.1).

(33) Advise and assist contractors regarding their priorities and allocations responsibilities and assist contracting offices in processing requests for special assistance and for priority ratings for privately owned capital equipment.

(34) Monitor contractor industrial labor relations matters under the contract; apprise the contracting officer and, if designated by the agency, the cognizant labor relations advisor, of actual or potential labor disputes; and coordinate the removal of urgently required material from the strikebound contractor's plant upon instruction from, and authorization of, the contracting officer.

(35) Coordinate traffic management services, including issuance and control of Government bills of lading and other transportation documents.

(36) Review the adequacy of the contractor's traffic operations.

(37) Review and evaluate preservation, packaging, and packing.

(38) Ensure contractor compliance with contractual quality assurance requirements (see Part 46).

(39) Ensure contractor compliance with contractual safety requirements.

(40) Perform engineering surveillance to assess compliance with contractual terms for schedule, cost, and technical performance in the areas of design, development, and production.

(41) Evaluate for adequacy and perform surveillance of contractor engineering efforts and management systems that relate to design, development, production, engineering changes, subcontractors, tests, management of engineering resources, reliability and maintainability, data control systems, configuration management, and independent research and development.

(42) Review and evaluate for technical adequacy the contractor's logistics support, maintenance, and modification programs.

(43) Report to the contracting office any inadequacies noted in specifications.

(44) Perform engineering analyses of contractor cost proposals.

(45) Review and analyze contractor-proposed engineering and design studies and submit comments and recommendations to the contracting office, as required.

(46) Review engineering change proposals for proper classification, and when required, for need, technical adequacy of design, producibility, and impact on quality, reliability, schedule, and cost; submit comments to the contracting office.

(47) Assist in evaluating and make recommendations for acceptance or rejection of waivers and deviations.

(48) Evaluate and monitor the contractor's procedures for complying with procedures regarding restrictive markings on data.

(49) Monitor the contractor's value engineering program.

(50) Review, approve or disapprove, and maintain surveillance of the contractor's purchasing system (see Part 44).

(51) Consent to the placement of subcontracts.

(52) Review, evaluate, and approve plant or division-wide small, small disadvantaged and women-owned small business master subcontracting plans.

(53) Obtain the contractor's currently approved company- or division-wide plans for small, small disadvantaged and women-owned small business subcontracting for its commercial products, or, if there is no currently approved plan, assist the contracting officer in evaluating the plans for those products.

(54) Assign and perform supporting contract administration.

(55) Ensure timely submission of required reports.

(56) Issue administrative changes, correcting errors or omissions in typing, contractor address, facility or activity code, remittance address, computations which do not require additional contract funds, and other such changes (see 43.101).

(57) Cause release of shipments from contractor's plants according to the shipping instructions. When applicable, the order of assigned priority shall be followed; shipments within the same priority shall be determined by date of the instruction.

(58) Obtain contractor proposals for any contract price adjustments resulting from amended shipping instructions. Review all amended shipping instructions on a periodic, consolidated basis to ensure that adjustments are timely made. Except when the ACO has settlement authority, the ACO shall forward the proposal to the contracting officer for contract modification. The ACO shall not delay shipments pending completion and formalization of negotiations of revised shipping instructions.

(59) Negotiate and/or execute supplemental agreements, as required, making changes in packaging subcontractors or contract shipping points.

(60) Cancel unilateral purchase orders when notified of nonacceptance by the contractor. The CAO shall notify the contracting officer when the purchase order is canceled.

(61) Negotiate and execute one-time supplemental agreements providing for the extension of contract delivery schedules up to 90 days on contracts with an assigned Criticality Designator of C (see 42.1105). Notification that the contract delivery schedule is being extended shall be provided to the contracting office. Subsequent extensions on any individual contract shall be authorized only upon concurrence of the contracting office.

(62) Accomplish administrative closeout procedures (see 4.804-5).

(63) Support the program, product, and project offices regarding program reviews, program status, program performance and actual or anticipated program problems.

(64) Monitor the contractor's environmental practices for adverse impact on contract performance or contract cost, and for compliance with environmental requirements specified in the contract. ACO responsibilities include—

(i) Requesting environmental technical assistance, if needed;

(ii) Monitoring contractor compliance with specifications requiring the use of environmentally preferable products, energy-efficient products, and materials or delivery of end products with specified recovered material content. This must occur as part of the quality assurance procedures set forth in Part 46; and

(iii) As required in the contract, ensuring that the contractor complies with the reporting requirements relating to recovered material content utilized in contract performance (see Subpart 23.4).

(65) Administer commercial financing provisions and monitor contractor security to ensure its continued adequacy to cover outstanding payments, when on-site review is required.

(66) Deobligate excess funds after final price determination.

(b) The CAO shall perform the following functions only when and to the extent specifically authorized by the contracting office:

(1) Negotiate or negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the Changes clause. Before completing negotiations, coordinate any delivery schedule change with the contracting office.

(2) Negotiate prices and execute priced exhibits for unpriced orders issued by the contracting officer under basic ordering agreements.

(3) Negotiate or negotiate and execute supplemental agreements changing contract delivery schedules.

(4) Negotiate or negotiate and execute supplemental agreements providing for the deobligation of unexpended dollar balances considered excess to known contract requirements.

(5) Issue amended shipping instructions and, when necessary, negotiate and execute supplemental agreements incorporating contractor proposals resulting from these instructions.

(6) Negotiate changes to interim billing prices.

(7) Negotiate and definitize adjustments to contract prices resulting from exercise of an economic price adjustment clause (see Subpart 16.2).

(8) Issue change orders and negotiate and execute resulting supplemental agreements under contracts for ship construction, conversion, and repair.

(9) Execute supplemental agreements on firm-fixed-price supply contracts to reduce required contract line item quantities and deobligate excess funds when notified by the contractor of an inconsequential delivery shortage, and it is determined that such action is in the best interests of the Government, notwithstanding the default provisions of the contract. Such action will be taken only upon the written request

of the contractor and, in no event, shall the total downward contract price adjustment resulting from an inconsequential delivery shortage exceed \$250.00 or 5 percent of the contract price, whichever is less.

(10) Execute supplemental agreements to permit a change in place of inspection at origin specified in firm-fixed-price supply contracts awarded to nonmanufacturers, as deemed necessary to protect the Government's interests.

(11) Prepare evaluations of contractor performance in accordance with Subpart 42.15.

(c) Any additional contract administration functions not listed in 42.302(a) and (b), or not otherwise delegated, remain the responsibility of the contracting office.

Subpart 42.4—Correspondence and Visits

42.401 Contract correspondence.

(a) The contracting officer (or other contracting agency personnel) normally shall (1) forward correspondence relating to assigned contract administration functions through the cognizant contract administration office (CAO) to the contractor, and (2) provide a copy for the CAO's file. When urgency requires sending such correspondence directly to the contractor, a copy shall be sent concurrently to the CAO.

(b) The CAO shall send the contracting office a copy of pertinent correspondence conducted between the CAO and the contractor.

42.402 Visits to contractors' facilities.

(a) Government personnel planning to visit a contractor's facility in connection with one or more Government contracts shall provide the cognizant CAO with the following information, sufficiently in advance to permit the CAO to make necessary arrangements. Such notification is for the purpose of eliminating duplicative reviews, requests, investigations, and audits relating to the contract administration functions in subpart 42.3 delegated to CAO's and shall, as a minimum, include the following (see also paragraph (b) of this section):

- (1) Visitors' names, official positions, and security clearances.
- (2) Date and duration of visit.
- (3) Name and address of contractor and personnel to be contacted.

(4) Contract number, program involved, and purpose of visit.

(5) If desired, visitors to a contractor's plant may request that a representative of the CAO accompany them. In any event, the CAO has final authority to decide whether a representative shall accompany a visitor.

(b) If the visit will result in reviewing, auditing, or obtaining any information from the contractor relating to contract administration functions, the prospective visitor shall identify the information in sufficient detail so as to permit the CAO, after consultation with the contractor and the cognizant audit office, to determine whether such information, adequate to fulfill the requirement, has recently been reviewed by or is available within the Government. If so, the CAO will discourage the visit and refer the prospective visitor to the Government office where such information is located. Where the office is the CAO, such information will be immediately forwarded or otherwise made available to the requestor.

(c) Visitors shall fully inform the CAO of any agreements reached with the contractor or other results of the visit that may affect the CAO.

42.403 Evaluation of contract administration offices.

Onsite inspections or evaluations of the performance of the assigned functions of a contract administration office shall be accomplished only by or under the direction of the agency of which that office is a part.

Subpart 42.5—Postaward Orientation

42.500 Scope of subpart.

This subpart prescribes policies and procedures for the postaward orientation of contractors and subcontractors through—

- (a) A conference; or
- (b) A letter or other form of written communication.

42.501 General.

(a) A postaward orientation aids both Government and contractor personnel to (1) achieve a clear and mutual understanding of all contract requirements, and (2) identify and resolve potential problems. However, it is not a substitute for the contractor's fully understanding the work requirements at the time offers are submitted, nor is it to be used to alter the final agreement arrived at in any negotiations leading to contract award.

(b) Postaward orientation is encouraged to assist small business, small disadvantaged and women-owned small business concerns.

(c) While cognizant Government or contractor personnel may request the contracting officer to arrange for orientation, it is up to the contracting officer to decide whether a postaward orientation in any form is necessary.

(d) Maximum benefits will be realized when orientation is conducted promptly after award.

42.502 Selecting contracts for postaward orientation.

When deciding whether postaward orientation is necessary and, if so, what form it shall take, the contracting officer shall consider, as a minimum, the—

- (a) Nature and extent of the preaward survey and any other prior discussions with the contractor;
- (b) Type, value, and complexity of the contract;
- (c) Complexity and acquisition history of the product or service;
- (d) Requirements for spare parts and related equipment;
- (e) Urgency of the delivery schedule and relationship of the product or service to critical programs;
- (f) Length of the planned production cycle;
- (g) Extent of subcontracting;
- (h) Contractor's performance history and experience with the product or service;
- (i) Contractor's status, if any, as a small business, small disadvantaged or women-owned small business concern;
- (j) Contractor's performance history with small, small disadvantaged and women-owned small business subcontracting programs;
- (k) Safety precautions required for hazardous materials or operations; and
- (l) Complex financing arrangements, such as progress payments, advance payments, or guaranteed loans.

42.503 Postaward conferences.

42.503-1 Postaward conference arrangements.

(a) The contracting officer who decides that a conference is needed is responsible for—

- (1) Establishing the time and place of the conference;
- (2) Preparing the agenda, when necessary;
- (3) Notifying appropriate Government representatives (*e.g.*, contracting/contract administration office) and the contractor;
- (4) Designating or acting as the chairperson;
- (5) Conducting a preliminary meeting of Government personnel; and
- (6) Preparing a summary report of the conference.

(b) When the contracting office initiates a conference, the arrangements may be made by that office or, at its request, by the contract administration office.

42.503-2 Postaward conference procedure.

The chairperson of the conference shall conduct the meeting. Unless a contract change is contemplated, the chairperson shall emphasize that it is not the purpose of the meeting to change the contract. The contracting officer may make commitments or give directions within the scope of the contracting officer's authority and shall put in writing and sign any commitment or direction, whether or not it changes the contract. Any change to the contract that results from the postaward conference shall be made only by a contract modification referencing the applicable terms of the contract. Participants without authority to bind the Government shall not take action that in any way alters the contract. The chairperson shall include in the summary report (see 42.503-3) all information and guidance provided to the contractor.

42.503-3 Postaward conference report.

The chairperson shall prepare and sign a report of the postaward conference. The report shall cover all items discussed, including areas requiring resolution, controversial matters, the names of the participants assigned responsibility for further actions, and the due dates for the actions. The chairperson shall furnish copies of the report to the contracting office, the contract administration office, the contractor, and others who require the information.

42.504 Postaward letters.

In some circumstances, a letter or other written form of communication to the contractor may be adequate postaward orientation (in lieu of a conference). The letter should identify the Government representative responsible for administering the contract and cite any unusual or significant contract requirements. The rules on changes to the contract in 42.503-2 also apply here.

42.505 Postaward subcontractor conferences.

(a) The prime contractor is generally responsible for conducting postaward conferences with subcontractors. However, the prime contractor may invite Government representatives to a conference with subcontractors, or the Government may request that the prime contractor initiate a conference with subcontractors. The prime contractor should ensure that representatives from involved contract administration offices are invited.

(b) Government representatives—

(1) Must recognize the lack of privity of contract between the Government and subcontractors;

(2) Shall not take action that is inconsistent with or alters subcontracts; and

(3) Shall ensure that any changes in direction or commitment affecting the prime contract or contractor resulting from a subcontractor conference are made by written direction of the contracting officer to the prime contractor in the same manner as described in 42.503-2.

Subpart 42.6—Corporate Administrative Contracting Officer

42.601 General.

Contractors with more than one operational location (*e.g.*, division, plant, or subsidiary) often have corporate-wide policies, procedures, and activities requiring Government review and approval and affecting the work of more than one administrative contracting officer (ACO). In these circumstances, effective and consistent contract administration may require the assignment of a corporate administrative contracting officer (CACO) to deal with corporate management and to perform selected contract administration functions on a corporate-wide basis.

42.602 Assignment and location.

(a) A CACO may be assigned only when (1) the contractor has at least two locations with resident ACO's or (2) the need for a CACO is approved by the agency head or designee (for this purpose, a nonresident ACO will be considered as resident if at least 75 percent of the ACO's effort is devoted to a single contractor). One of the resident ACO's may be designated to perform the CACO functions, or a full-time CACO may be assigned. In determining the location of the CACO, the responsible agency shall take into account such factors as the location(s) of the corporate records, corporate office, major plant, cognizant government auditor, and overall cost effectiveness.

(b) A decision to initiate or discontinue a CACO assignment should be based on such factors as the—

- (1) Benefits of coordination and liaison at the corporate level;
- (2) Volume of Government sales;
- (3) Degree of control exercised by the contractor's corporate office over Government-oriented lower-tier operating elements; and
- (4) Impact of corporate policies and procedures on those elements.

(c) Responsibility for assigning a CACO shall be determined as follows:

(1) When all locations of a corporate entity are under the contract administration cognizance of a single agency, that agency is responsible.

(2) When the locations are under the contract administration cognizance of more than one agency, the agencies concerned shall agree on the responsible agency (normally on the basis of the agency with the largest dollar balance, including options, of affected contracts). In such cases, agencies may also consider geographic location.

(d) The directory of contract administration services components referenced in 42.203 includes a listing of CACO's and the contractors for which they are assigned responsibility.

42.603 Responsibilities.

(a) The CACO shall perform, on a corporate-wide basis, the contract administration functions as designated by the responsible agency. Typical CACO functions include—

(1) The determination of final indirect cost rates for cost-reimbursement contracts;

(2) Establishment of advance agreements or recommendations on corporate/ home office expense allocations; and

(3) Administration of Cost Accounting Standards (CAS) applicable to corporate-level and corporate-directed accounting practices.

(b) The CACO shall—

(1) Fully utilize the responsible contract audit agency financial and advisory accounting services, including—

(i) Advice regarding the acceptability of corporate-wide policies; and

(ii) Advisory audit reports;

(2) Keep cognizant ACO's and auditors informed of important matters under consideration and determinations made; and

(3) Solicit their advice and participation as appropriate.

Subpart 42.7—Indirect Cost Rates

42.700 Scope of subpart.

This subpart prescribes policies and procedures for establishing—

- (a) Billing rates; and
- (b) Final indirect cost rates.

42.701 Definition.

“Billing rate,” as used in this subpart, means an indirect cost rate—

- (1) Established temporarily for interim reimbursement of incurred indirect costs; and
- (2) Adjusted as necessary pending establishment of final indirect cost rates.

42.702 Purpose.

(a) Establishing final indirect cost rates under this subpart provides—

- (1) Uniformity of approach with a contractor when more than one contract or agency is involved;
- (2) Economy of administration; and
- (3) Timely settlement under cost-reimbursement contracts.

(b) Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

42.703 General.

42.703-1 Policy.

(a) A single agency (see 42.705-1) shall be responsible for establishing final indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

(b) Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(c) (1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in 42.708 is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject to any specific limitation in a contract or advance agreement; and

(c)(2) Established final indirect cost rates shall be used in negotiating the final price of fixed-price incentive and fixed-

price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in 42.708 is used.

42.703-2 Certificate of indirect costs.

(a) *General.* A proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The Public Printer, or designee, may waive the certification requirement when—

- (i) It is determined to be in the interest of the United States; and
- (ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

- (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;
- (ii) A state or local government subject to OMB Circular A-87;
- (iii) An educational institution subject to OMB Circular A-21; and
- (iv) A nonprofit organization subject to OMB Circular A-122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

(2) Rates established unilaterally should be—

- (i) Based on audited historical data or other available data as long as unallowable costs are excluded; and
- (ii) Set low enough to ensure that unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor’s certificate of final indirect costs is thought to be false.

(e) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, Certification of Final Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

42.704 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under 42.705 for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other

contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

(d) The elements of indirect cost and the base or bases used in computing billing rates shall not be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

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

42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

- (1) Contracting officer determination procedure (see 42.705-1), or
- (2) Auditor determination procedure (see 42.705-2).

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

- (1) Pending closeout of subcontracts awaiting Government audit.
- (2) Pending contractor, subcontractor, or Government claims.
- (3) Delays in the disposition of Government property.

- (4) Delays in contract reconciliation.
- (5) Any other pertinent factors.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

- (i) Determine the amounts due to the contractor under the contract; and
- (ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with 33.211.

42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

(1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (see Subpart 42.6), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(2) Business units not under the cognizance of a corporate administrative contracting officer, but having a resident administrative contracting officer (see 42.602), with that officer responsible for the determination. For this purpose, a nonresident administrative contracting officer is considered as resident if at least 75 percent of the administrative contracting officer's time is devoted to a single contractor.

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

- (4) Educational institutions (see 42.705-3).
- (5) State and local governments (see 42.705-4).
- (6) Nonprofit organizations other than educational and state and local governments (see 42.705-5).

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer (or cognizant Federal agency official) and auditor within the 6-month period fol-

lowing the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 6 of the Defense Contract Audit Agency Pamphlet No. 7641.90, Information for Contractors, available via the Internet at <http://www.dcaa.mil>.

(2) The auditor shall submit to the contracting officer (or cognizant Federal agency official) an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(4) The Government negotiating team shall develop a negotiation position. The contracting officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor's opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.

(5) The cognizant contracting officer shall—

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering—

(A) The disposition of significant matters in the advisory audit report;

(B) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(C) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(D) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with 42.706.

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

42.705-2 Auditor determination procedure.

(a) *Applicability and responsibility.* (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in 42.705-1(a).

(2) In addition, auditor determination may be used for business units that are covered in 42.705-1(a) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(i) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(ii) The administrative cost of contracting officer determination would exceed the expected benefits.

(iii) The business unit does not have a history of disputes and there are few cost problems.

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency official) and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).

(2) Upon receipt of a proposal, the auditor shall—

(i) Audit the proposal and seek agreement on indirect costs with the contractor;

(ii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see 42.203), who will then resolve the disagreement; and

(iv) Distribute resulting documents in accordance with 42.706.

42.705-3 Educational institutions.

(a) *General.* (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) of this subsection).

(2) OMB Circular No. A-21, Cost Principles for Educational Institutions, assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.103).

(3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, Subpart 31.3, and the OMB Circular. The agency shall follow the procedures outlined in 42.705-1(b).

(4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.

(b) *Predetermined final indirect cost rates.* (1) Undercost-reimbursement research and development contracts with universities, colleges, or other educational institutions, payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be appropriate for the educational institution concerned, the agency should consider both the stability of the institution's indirect costs and bases over a period of years and any anticipated changes in the amount of the direct and indirect costs.

(3) Unless their use is approved at a level in the agency (see paragraph (a)(2) of this subsection) higher than the contracting officer, predetermined rates shall not be used when—

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed \$1 million annually.

(4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (*e.g.*, \$100,000 or less), an audit made at an earlier date is acceptable if—

(A) There have been no significant changes in the contractor's organization; and

(B) It is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.

(5) If predetermined rates are used—

(i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and

(ii) See 16.307(i), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).

(7) Contracting officers shall use billing rates established by the agency to reimburse the contractor for work performed during a period not covered by predetermined rates.

42.705-4 State and local governments.

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

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

(See OMB Circular No. A-122.)

42.706 Distribution of documents.

(a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in Subpart 4.2, Contract Distribution.

(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

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

(a) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by

accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. For cost sharing under research and development contracts, see 35.003(b).

(b)(1) Other situations may make it prudent to provide a final indirect cost rate ceiling in a contract. Examples of such circumstances are when the proposed contractor—

(i) Is a new or recently reorganized company, and there is no past or recent record of incurred indirect costs;

(ii) Has a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses; or

(iii) Seeks to enhance its competitive position in a particular circumstance by basing its proposal on indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.

(2) In such cases, an equitable ceiling covering the final indirect cost rates may be negotiated and specified in the contract.

(c) When ceiling provisions are utilized, the contract shall also provide that—

(1) The Government will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling rates, and

(2) In the event the final indirect cost rates are less than the negotiated ceiling rates, the negotiated rates will be reduced to conform with the lower rates.

42.708 Quick-closeout procedure.

(a) The contracting officer responsible for contract closeout shall negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if—

(1) The contract is physically complete;

(2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant. Indirect cost amounts will be considered insignificant when—

(i) The total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year. The contracting officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information; and

(3) Agreement can be reached on a reasonable estimate of allocable dollars.

(b) Determinations of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 or 52.216-13 shall be final for the contract it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

42.709 [Reserved]

42.709-1 [Reserved]

42.709-2 Responsibilities.

(a) The cognizant contracting officer is responsible for referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable;

(2) Providing rationale and supporting documentation for any recommendation; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

42.709-3 [Reserved]

42.709-4 Computing interest.

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

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

42.709-5 [Reserved]

42.709-6 [Reserved]

Subpart 42.8—Disallowance of Costs

42.800 Scope of subpart.

This subpart prescribes policies and procedures for—

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

42.801 Notice of intent to disallow costs.

(a) At any time during the performance of a contract of a type referred to in 42.802, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. However, before issuing the notice, the contracting officer responsible for administering the contract shall make every reasonable effort to reach a satisfactory settlement through discussions with the contractor.

(b) A notice of intent to disallow such costs usually results from monitoring contractor costs. The purpose of the notice is to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and to provide for timely resolution of any resulting disagreement. In the event of disagreement, the contractor may submit to the contracting officer a written response. Any such response shall be answered by withdrawal of the notice or by making a written decision within 60 days.

(c) As a minimum, the notice shall—

- (1) Refer to the contract's Notice of Intent to Disallow Costs clause;
- (2) State the contractor's name and list the numbers of the affected contracts;
- (3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;
- (4) Describe the potential impact on billing rates and forward pricing rate agreements;
- (5) State the notice's effective date and the date by which written response must be received;
- (6) List the recipients of copies of the notice; and
- (7) Request the contractor to acknowledge receipt of the notice.

(d) The contracting officer issuing the notice shall furnish copies to all contracting officers cognizant of any segment of the contractor's organization.

(e) If the notice involves elements of indirect cost, it shall not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.705).

(f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) of this section), the contracting officer who issued the notice shall either with-

draw the notice or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer responsible under 42.705 for determining final indirect cost rates shall issue the decision.

42.802 Contract clause.

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

42.803 Disallowing costs after incurrence.

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

(a) *Contracting officer receipt of vouchers.* When contracting officers receive vouchers directly from the contractor and, with or without auditor assistance, approve or disapprove them, the process shall be conducted in accordance with the normal procedures of the individual agency.

(b) *Auditor receipt of vouchers.* (1) When authorized by agency regulations, the contract auditor may be authorized to (i) receive reimbursement vouchers directly from contractors, (ii) approve for payment those vouchers found acceptable, and (iii) suspend payment of questionable costs. The auditor shall forward approved vouchers for payment to the cognizant contracting, finance, or disbursing officer, as appropriate under the agency's procedures.

(2) If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the auditor, after informal discussion as appropriate, may, where authorized by agency regulations, issue a notice of contract costs suspended and/or disapproved simultaneously to the contractor and the disbursing officer, with a copy to the cognizant contracting officer, for deduction from current payments with respect to costs claimed but not considered reimbursable.

(3) If the contractor disagrees with the deduction from current payments, the contractor may—

(i) Submit a written request to the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss the findings with the contractor;

(ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or

(iii) Do both of the above.

Subpart 42.9—Bankruptcy

42.900 Scope of subpart.

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

42.901 General.

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

42.902 Procedures.

(a) When notified of bankruptcy proceedings, MMS shall, as a minimum—

(1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (*e.g.*, contracting, financial, property) and affected buying activities;

(2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);

(3) Take actions necessary to protect the Government's financial interests and safeguard Government property; and

(4) Furnish pertinent contract information to the legal counsel representing the Government.

(b) The contracting officer shall consult with legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

42.903 Solicitation provision and contract clause.

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

Subpart 42.10—[Reserved]

Subpart 42.11—Production Surveillance and Reporting

42.1101 General.

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

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

42.1102 Applicability.

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

42.1103 Policy.

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

42.1104 Surveillance requirements.

(a) The contract administration office determines the extent of production surveillance on the basis of—

- (1) The criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services; and
- (2) Consideration of the following factors:
 - (i) Contract requirements for reporting production progress and performance.
 - (ii) The contract performance schedule.
 - (iii) The contractor's production plan.
 - (iv) The contractor's history of contract performance.
 - (v) The contractor's experience with the contract supplies or services.
 - (vi) The contractor's financial capability.
 - (vii) Any supplementary written instructions from the contracting office.

(b) Contracts at or below the simplified acquisition threshold should not normally require production surveillance.

(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.

(d) In performing surveillance, contract administration office personnel shall avoid any action that may—

- (1) Be inconsistent with any contract requirement; or
- (2) Result in claims of waivers, of changes, or of other contract modifications.

42.1105 Assignment of criticality designator.

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

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

42.1106 Reporting requirements.

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

(b) Contract administration offices shall review and verify the accuracy of contractor reports and advise the contracting officer of any required action. The accuracy of contractor-prepared reports shall be verified either by a program of continuous surveillance of the contractor's report-preparation system or by individual review of each report.

(c) The contract administration office may at any time initiate a report to advise the contracting officer (and the inventory manager, if one is designated in the contract) of any potential or actual delay in performance. This advice shall—

- (1) Be in writing;
- (2) Be provided in sufficient time for the contracting officer to take necessary action; and
- (3) Provide a definite recommendation, if action is appropriate.

42.1107 Contract clause.

(a) The contracting officer shall insert the clause at 52.242-2, Production Progress Reports, in solicitations and

contracts when production progress reporting is required; unless a facilities contract, a construction contract, or a Federal Supply Schedule contract is contemplated.

(b) When the clause at 52.242-2 is used, the contracting officer shall specify appropriate reporting instructions in the Schedule (see 42.1106(a)).

Subpart 42.12—Novation and Change-of-Name Agreements

42.1200 Scope of subpart.

This subpart prescribes policies and procedures for—

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

42.1201 [Reserved]

42.1202 Responsibility for executing agreements.

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

(a) If any of the affected contracts held by the transferor have been assigned to an administrative contracting officer (ACO) (see 2.1 and 42.202), the responsible contracting officer shall be—

(1) This ACO; or

(2) The ACO responsible for the corporate office, if affected contracts are in more than one plant or division of the transferor.

(b) If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts shall be the responsible contracting officer.

(c) If several transferors are involved, the responsible contracting officer shall be—

(1) The ACO administering the largest unsettled dollar balance; or

(2) The contracting officer (or ACO) designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

42.1203 Processing agreements.

(a) If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see 42.1202). If the contractor received its contract under Subpart 8.7 under the Javits-Wagner-O'Day Act, use the procedures at 8.716 instead.

(b) The responsible contracting officer shall—

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204 (e) and (f) or 42.1205(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under Subpart 9.1, Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (*e.g.*, long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

(f) Before novation and change-of-name agreements are executed, the responsible contracting officer shall ensure that Government counsel has reviewed them for legal sufficiency.

(g) The responsible contracting officer shall—

(1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee; and

(2) Retain a signed copy in the case file.

(h) Following distribution of the agreement, the responsible contracting officer shall—

(1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;

(2) Retain the original Standard Form 30 with the attached list in the case file;

(3) Send a signed copy of the Standard Form 30, with attached list to the transferor and to the transferee; and

(4) Send a copy of this Standard Form 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

42.1204 Applicability of novation agreements.

(a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See 14.404-2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

(i) Sale of these assets with a provision for assuming liabilities;

(ii) Transfer of these assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.1203(e)).

(c) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with Subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 9.503.

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, *e.g.*, purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; *e.g.*, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

(h) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that—

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

(i) The responsible contracting officer shall use the following format for agreements when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

NOVATION AGREEMENT

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

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into certain contracts with the Transferor, namely: _____ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked 'Exhibit A' and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.

(2) As of _____, 20____, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a _____ [insert term descriptive of the legal transaction involved] between the Transferor and the Transferee.

(3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.

(4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.

(5) The Transferee is in a position to fully perform all obligations that may exist under the contracts.

(6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.

(7) Evidence of the above transfer has been filed with the Government. [When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) of this Agreement)].

(8) A certificate dated _____, 20____, signed by the Secretary of State of _____ [insert State], to the effect that the corporate name of EFG Corporation was changed to XYZ Corporation on _____, 20____, has been filed with the Government.

(b) In consideration of these facts, the parties agree that by this Agreement—

(1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.

(2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.

(3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.

(4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.

(5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.

(6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.

(7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.

(8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee—

(i) Assumes under this Agreement; or

(ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.

(9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

BY _____
TITLE _____

ABC CORPORATION,

By _____
TITLE _____
[Corporate Seal]

XYZ CORPORATION,

By _____
TITLE _____
[Corporate Seal]

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20__.

By _____
[Corporate Seal]

CERTIFICATE

I, _____, certify that I am the Secretary of XYZ Corporation, that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of _____ 20__.

BY _____
[Corporate Seal]

42.1205 Agreement to recognize contractor's change of name.

(a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the

Change-of-Name Agreement, and one copy each of the following:

(1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.

(2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.

(3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.

(b) The following suggested format for an agreement may be adapted for specific cases:

CHANGE-OF-NAME AGREEMENT

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

(a) The parties agree to the following facts:

(1) The Government, represented by various Contracting Officers of the _____ [insert name(s) of agency(ies)], has entered into certain contracts and purchase orders with the XYZ Corporation, namely: _____ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).

(2) The XYZ Corporation, by an amendment to its certificate of incorporation, dated _____ 20__, has changed its corporate name to ABC Corporation.

(3) This amendment accomplishes a change of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.

(4) Documentary evidence of this change of corporate name has been filed with the Government.

(b) In consideration of these facts, the parties agree that—

(1) The contracts covered by this Agreement are amended by substituting the name "ABC Corporation" for the name "XYZ Corporation" wherever it appears in the contracts; and

(2) Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,

BY _____

TITLE _____

ABC Corporation,

BY _____

TITLE _____

[*Corporate Seal*]

CERTIFICATE

I, _____, certify that I am the Secretary of ABC Corporation; that _____, who signed this Agreement for this corporation, was then _____ of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this _____ day of _____ 20____.

BY _____

[*Corporate Seal*]

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

42.1301 General.

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

42.1302 Suspension of work.

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

42.1303 Stop-work orders.

(a) Stop-work orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs.

(b) Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order shall be approved at a level higher than the contracting officer. Stop-work orders shall not be used in place of a termination notice after a decision to terminate has been made.

(c) Stop-work orders should include—

- (1) A description of the work to be suspended;
- (2) Instructions concerning the contractor's issuance of further orders for materials or services;
- (3) Guidance to the contractor on action to be taken on any subcontracts; and
- (4) Other suggestions to the contractor for minimizing costs.

(d) Promptly after issuing the stop-work order, the contracting officer should discuss the stop-work order with the contractor and modify the order, if necessary, in light of the discussion.

(e) As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer shall take appropriate action to—

- (1) Terminate the contract;
- (2) Cancel the stop-work order (any cancellation of a stop-work order shall be subject to the same approvals as were required for its issuance); or

(3) Extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of the stop-work order shall be by a supplemental agreement).

42.1304 Government delay of work.

(a) The clause at 52.242-17, Government Delay of Work, provides for the administrative settlement of contractor claims that arise from delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer. This clause is not applicable if the contract otherwise specifically provides for an equitable adjustment because of the delay or interruption; *e.g.*, when the Changes clause is applicable.

(b) The clause does not authorize the contracting officer to order a suspension, delay, or interruption of the contract work and it shall not be used as the basis or justification of such an order.

(c) If the contracting officer has notice of an unordered delay or interruption covered by the clause, the contracting officer shall act to end the delay or take other appropriate action as soon as practicable.

(d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, and related cost or pricing data, or information other than cost or pricing data.

42.1305 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242 14, Suspension of Work, in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated.

(b)(1) The contracting officer may, when contracting by negotiation, insert the clause at 52.242-15, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development.

(2) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall insert the clause at 52.242 16, Stop-Work Order—Facilities, in solicitations and contracts when a facilities acquisition contract or a consolidated facilities contract is contemplated.

(d) The contracting officer shall insert the clause at 52.242 17, Government Delay of Work, in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

Subpart 42.14—Traffic and Transportation Management

42.1401 General.

(a) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. If the transportation data regarding f.o.b. origin contracts is insufficient for Government transportation management purposes, the CAO shall obtain the data used in the evaluation of offers.

(b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, are responsible for—

(1) Furnishing timely routings and releases for port shipments;

(2) Monitoring shipments to provide for carload or truckload quantities when practicable;

(3) Controlling and issuing U.S. Government bills of lading (GBL's) and determining proper freight classification descriptions;

(4) Reviewing documentation to ensure the proper distribution and validation of shipping documents;

(5) Developing, and advising on, transportation cost differentials brought on by proposed changes in contract terms; *e.g.*, delivery schedules;

(6) Determining, for contract requirements, the size and carrying capability of carrier equipment to transport overdimensional and/or overweight supplies, hazardous materials, or supplies requiring special shipping arrangements;

(7) Developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 42.1402(b));

(8) Exercising control of irregularities in preservation, packing, loading, blocking and bracing, and other causes contributing to loss and damage; sealing of carrier equipment and documentation;

(9) Providing information on the use of transit arrangements;

(10) Recommending, when appropriate, prepayment by contractor for f.o.b. origin shipments or parcel post (see 47.303-17 and 42.1404);

(11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed \$100, as authorized in 41 CFR 101-41.304-2;

(12) Diverting, reconsigning, tracing, and expediting shipments;

(13) Considering the capabilities of contractors for meeting new or emergency requirements that arise during the contract administration and using these capabilities when appropriate; and

(14) Using routings through established consolidation stations when it is in the Government's interest.

(c) Civilian agencies shall consult and cooperate with the Office of Transportation of the General Services Administration (GSA) as required in 41 CFR 101-40. (See 47.105, Transportation assistance, for assistance to civilian Government activities or to military installations.)

42.1402 Volume movements within the continental United States.

(a)(1) For purposes of contract administration, a volume movement is—

(i) In DOD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from one origin point for delivery to one destination point or area; and

(ii) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.

(2) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DOD activities report to the Military Traffic Management Command (MTMC) under the Defense Traffic Management Regulation (DTMR). Civilian agencies report to GSA, Office of Transportation, or other designated offices under the Federal Property Management Regulations (FPMR), specifically 41 CFR 101-40.305-2.

(b) Reporting of volume movements permits MTMC and GSA transportation personnel to determine the reasonableness of applicable current rates and, when appropriate, to negotiate adjusted or modified rates.

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

(a) Except as provided in 47.303-17, when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on U.S. Government bills of lading (GBL's), or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished by the CAO or the appropriate agency transportation office. Each agency shall establish appropriate procedures by which the contractor shall obtain GBL's. The contracting officer shall not authorize the contractor to ship on commercial bills of lading for conversion to GBL's unless delivery is extremely urgent and GBL's are not readily available.

(b) The possible application of reduced rates under section 10721 of the Interstate Commerce Act for shipments on commercial bills of lading and the Commercial Bill of Lading Notations clause are discussed at 47.104.

(c)(1) The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when trans-

portation costs do not exceed \$100, is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.

(2) For DOD shipments, corresponding guidance is in Chapter 32 of the DTMR.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post eligible shipments.

(a)(1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These shipments will be mailed through the APO or FPO to the overseas user. Contractors shall not divide delivery quantities into mailable parcels for the purpose of avoiding shipments by other modes of transportation.

(2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.

(b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.

(2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G-000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, \$300." The name and address of a private person or firm shall not be shown.

(c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits

identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.

(d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

(a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.

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

42.1405 Discrepancies incident to shipment of supplies.

(a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19D, DLAR 4500.15.)

(b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.

(c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is a matter for settlement between the contractor and the carrier. However, the Government consignee shall—

(1) Notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt; and

(2) Furnish all available data to the CAO or appropriate agency office, which shall promptly transmit the data to the contractor.

42.1406 Report of shipment (REPSHIP).**42.1406-1 Advance notice.**

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials han-

dling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

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

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

42.1501 General.

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

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of \$1,000,000 (regardless of the date of contract award) and for each contract in excess of \$100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) MMS shall not evaluate performance for contracts awarded under Subparts 8.6 and 8.7. Agencies shall evaluate construction contractor performance and architect/engineer

contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

(a) Procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.

(b) Evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(c) MMS shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.

(d) Any past performance information systems, including automated systems, used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

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

Subpart 42.16—Small Business Contract Administration**42.1601 General.**

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with

respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Disputes Clause.

Subpart 42.17—Forward Pricing Rate Agreements

42.1701 Procedures.

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

(b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.406-3) and forward

copies of the PNM and FPRA to the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.407-3(c)).

(c) The FPRA shall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to ensure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.

(d) When an FPRA is invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.

(e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.

* * * * *

PART 43—CONTRACT MODIFICATIONS

Sec.

43.000 Scope of part.

Subpart 43.1—General

43.101 Definitions.

43.102 Policy.

43.103 Types of contract modifications.

43.104 Notification of contract changes.

43.105 Availability of funds.

43.106 [Reserved]

43.107 Contract clause.

Subpart 43.2—Change Orders

43.201 General.

43.202 Authority to issue change orders.

43.203 Change order accounting procedures.

43.204 Administration.

43.205 Contract clauses.

Subpart 43.3—Forms

43.301 Use of forms.

This page intentionally left blank.

43.000 Scope of part.

This part prescribes policies and procedures for preparing and processing contract modifications for all types of contracts including construction and architect-engineer contracts. It does not apply to—

- (a) Orders for supplies or services not otherwise changing the terms of contracts or agreements (*e.g.*, delivery orders under indefinite-delivery contracts); or
- (b) Modifications for extraordinary contractual relief (see Part 50).

Subpart 43.1—General**43.101 Definitions.**

As used in this part—

“Administrative change” means a unilateral (see 43.103(b)) contract change, in writing, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

“Effective date”—

- (1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.
- (2) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.
- (3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.
- (4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.
- (5) For a modification confirming the termination contracting officer’s previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

43.102 Policy.

(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not—

- (1) Execute contract modifications;
- (2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or
- (3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.

(b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the

Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical.

43.103 Types of contract modifications.

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

- (1) Make negotiated equitable adjustments resulting from the issuance of a change order;
- (2) Definitize letter contracts; and
- (3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

- (1) Make administrative changes;
- (2) Issue change orders;
- (3) Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and
- (4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and—

- (1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;
- (2) Countermand the alleged change; or
- (3) Notify the contractor that no change is considered to have occurred.

(b) The clause at 52.243-7, Notification of Changes, which is prescribed in 43.107—

- (1) Incorporates the policy expressed in paragraph (a) of this section;
- (2) Requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and
- (3) Specifies the responsibilities of the contractor and the Government with respect to such notifications.

43.105 Availability of funds.

(a) The contracting officer shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability, except for modifications to contracts that—

(1) Are conditioned on availability of funds (see 32.703-2); or

(2) Contain a limitation of cost or funds clause (see 32.704).

(b) The certification required by paragraph (a) of this section shall be based on the negotiated price, except that modifications executed before agreement on price may be based on the best available estimate of cost.

in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

43.106 [Reserved]

43.107 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 52.243-7, Notification of Changes,

Subpart 43.2—Change Orders

43.201 General.

(a) Generally, Government contracts contain a changes clause that permits the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing written change orders on Standard Form 30, Amendment of Solicitation/Modification of Contract (SF 30), unless otherwise provided (see 43.301).

(b) The contractor must continue performance of the contract as changed, except that in cost-reimbursement or incrementally funded contracts the contractor is not obligated to continue performance or incur costs beyond the limits established in the Limitation of Cost or Limitation of Funds clause (see 32.705-2).

(c) The contracting officer may issue a change order by telegraphic message under unusual or urgent circumstances; provided, that—

- (1) Copies of the message are furnished promptly to the same addressees that received the basic contract;
- (2) Immediate action is taken to confirm the change by issuance of a SF 30;
- (3) The message contains substantially the information required by the SF 30 (except that the estimated change in price shall not be indicated), including in the body of the message the statement, “Signed by (Name), Contracting Officer”; and
- (4) The contracting officer manually signs the original copy of the message.

43.202 Authority to issue change orders.

Change orders shall be issued by the contracting officer except when authority is delegated to an administrative contracting officer (see 42.202(c)).

43.203 Change order accounting procedures.

(a) Contractors’ accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit offers, the contracting officer should advise them of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the Change Order Accounting clause at 52.243-6.

(b) The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:

- (1) Nonrecurring costs (*e.g.*, engineering costs and costs of obsolete or reperformed work).
- (2) Costs of added distinct work caused by the change order (*e.g.*, new subcontract work, new prototypes, or new retrofit or backfit kits).

(3) Costs of recurring work (*e.g.*, labor and material costs).

43.204 Administration.

(a) *Change order documentation.* When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (*e.g.*, an option clause) initially require only one document.

(b) *Definitization.* (1) Contracting officers shall negotiate equitable adjustments resulting from change orders in the shortest practicable time.

(2) Administrative contracting officers negotiating equitable adjustments by delegation under 42.302(b)(1), shall obtain the contracting officer’s concurrence before adjusting the contract delivery schedule.

(3) Contracting offices and contract administration offices, as appropriate, shall establish suspense systems adequate to ensure accurate identification and prompt definitization of unpriced change orders.

(4) The contracting officer shall ensure that a cost analysis is made, if appropriate, under 15.404-1(c) and shall consider the contractor’s segregable costs of the change, if available. If additional funds are required as a result of the change, the contracting officer shall secure the funds before making any adjustment to the contract.

(5) When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer shall provide a list of any significant contract events which may aid in the analysis of the request. This list should include—

- (i) Date and dollar amount of contract award and/or modification;
- (ii) Date of submission of initial contract proposal and dollar amount;
- (iii) Date of alleged delays or disruptions;
- (iv) Performance dates as scheduled at date of award and/or modification;
- (v) Actual performance dates;
- (vi) Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered if applicable;
- (vii) Date of certification of the request for adjustment if certification is required; and
- (viii) Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor’s request for equitable adjustment.

(c) *Complete and final equitable adjustments.* To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order, the contracting officer should—

(1) Ensure that all elements of the equitable adjustment have been presented and resolved; and

(2) Include, in the supplemental agreement, a release similar to the following:

CONTRACTOR'S STATEMENT OF RELEASE

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

43.205 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) Insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. The contracting officer may vary the 30-day period in paragraph (c) of the clause according to agency procedures.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for—

(1) Dismantling, demolition, or removal of improvements; and

(2) Construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicitations and contracts for construction, when the contract amount is not expected to exceed the simplified acquisition threshold.

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

Subpart 43.3—Forms

43.301 Use of forms.

(a)(1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2) or actions processed under Part 15) be used for—

- (i) Any amendment to a solicitation;
- (ii) Change orders issued under the Changes clause of the contract;
- (iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;
- (iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;

- (v) Supplemental agreements (see 43.103); and
- (vi) Removal, reinstatement, or addition of funds to a contract.

(2) The SF 30 may be used for—

- (i) Modifications that change the price of contracts for the acquisition of petroleum as a result of economic price adjustment;
 - (ii) Termination notices; and
 - (iii) Purchase order modifications as specified in 13.302-3.
- (3) If it is anticipated that a change will result in a price change, the estimated amount of the price change shall not be shown on copies of SF 30 furnished to the contractor.

(b) The Optional Form 336 (OF 336), Continuation Sheet, or a blank sheet of paper, may be used as a continuation sheet for a contract modification.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

44.000 Scope of part.

Subpart 44.1—General

44.101 Definitions.

Subpart 44.2—Consent to Subcontracts

44.201 Consent and advance notification requirements.

44.201-1 Consent requirements.

44.201-2 Advance notification requirements.

44.202 Contracting officer's evaluation.

44.202-1 Responsibilities.

44.202-2 Considerations.

44.203 Consent limitations.

44.204 Contract clauses.

Subpart 44.3—Contractors' Purchasing Systems Reviews

44.301 Objective.

44.302 Requirements.

44.303 Extent of review.

44.304 Surveillance.

44.305 Granting, withholding, or withdrawing approval.

44.305-1 Responsibilities.

44.305-2 Notification.

44.305-3 Withholding or withdrawing approval.

44.306 Disclosure of approval status.

44.307 Reports.

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

44.401 Applicability.

44.402 Policy requirements.

44.403 Contract clause.

This page intentionally left blank.

44.000 Scope of part.

(a) This part prescribes policies and procedures for consent to subcontracts or advance notification of subcontracts, and for review, evaluation, and approval of contractors' purchasing systems.

(b) The consent and advance notification requirements of Subpart 44.2 are not applicable to prime contracts for commercial items acquired pursuant to Part 12.

Subpart 44.1—General**44.101 Definitions.**

As used in this part—

“Approved purchasing system” means a contractor's purchasing system that has been reviewed and approved in accordance with this part.

“Contractor” means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant, that performs its own purchasing.

“Contractor purchasing system review (CPSR)” means the complete evaluation of a contractor's purchasing of material and services, subcontracting, and subcontract management from development of the requirement through completion of subcontract performance.

“Facilities” (see 45.301).

“Subcontract” means any contract as defined in Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

Subpart 44.2—Consent to Subcontracts

44.202 Contracting officer's evaluation.

44.201 Consent and advance notification requirements.

44.202-1 Responsibilities.

44.201-1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (*e.g.*, subcontracts for engines on a prime contract for airframes).

(a) The cognizant administrative contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for—

(b) The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and

(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at 52.244-2. However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (k) of the clause at 52.244-2.

(2) Fixed-price subcontracts that exceed—

44.202-2 Considerations.

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(a) The contracting officer responsible for consent must, at a minimum, review the request and supporting data and consider the following:

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see 15.407-2)?

(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.

(2) Is the subcontract for special test equipment or facilities that are available from Government sources (see Subpart 45.3)?

(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see Part 51) constitutes consent.

(3) Is the selection of the particular supplies, equipment, or services technically justified?

44.201-2 Advance notification requirements.

Under cost-reimbursement contracts, even if the contractor has an approved purchasing system and consent to subcontract is not required under 44.201-1, the contractor is required to notify the agency before the award of—

(4) Has the contractor complied with the prime contract requirements regarding—

(a) Any cost-plus-fixed-fee subcontract; or

(i) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48)) (see Part 8)?

(b) Any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(5) Was adequate price competition obtained or its absence properly justified?

(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained accurate, complete, and current cost or pricing data, including any required certifications?

(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-furnished facilities?

(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(13) Is the proposed subcontractor on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs (see Subpart 9.4)?

(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—

(1) The prime contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

44.203 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers shall not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of 16.301-3;

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor;

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or

(5) Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of 16.103(c)).

(c) Contracting officers should not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause may also provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or board's decision. The clause may not attempt to obligate the contracting officer or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at 52.233-1, Disputes.

44.204 Contract clauses.

(a)(1) The contracting officer shall insert the clause at 52.244-2, Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A letter contract that exceeds the simplified acquisition threshold;

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or

(v) A labor-hour contract that exceeds the simplified acquisition threshold.

(2) If a cost-reimbursement contract is contemplated—

(i) The contracting officer shall use the clause with its Alternate II.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

(c) The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold, unless—

(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or

(2) A time-and-materials, labor-hour, or architect-engineer contract is contemplated.

Subpart 44.3—Contractors' Purchasing Systems Reviews

44.301 Objective.

The objective of a contractor purchasing system review (CPSR) is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer (ACO) a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

44.302 Requirements.

(a) The ACO shall determine the need for a CPSR based on, but not limited to, the past performance of the contractor, and the volume, complexity and dollar value of subcontracts. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to Part 12) are expected to exceed \$25 million during the next 12 months, perform a review to determine if a CPSR is needed. Sales include those represented by prime contracts, subcontracts under Government prime contracts, and modifications. Generally, a CPSR is not performed for a specific contract. The head of the agency responsible for contract administration may raise or lower the \$25 million review level if it is considered to be in the Government's best interest.

(b) Once an initial determination has been made under paragraph (a) of this section, at least every three years the ACO shall determine whether a purchasing system review is necessary. If necessary, the cognizant contract administration office will conduct a purchasing system review.

44.303 Extent of review.

A CPSR requires an evaluation of the contractor's purchasing system. Unless segregation of subcontracts is impracticable, this evaluation shall not include subcontracts awarded by the contractor exclusively in support of Government contracts that are competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment, or awarded for commercial items pursuant to Part 12. The considerations listed in 44.202-2 for consent evaluation of particular subcontracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to—

- (a) The degree of price competition obtained;
- (b) Pricing policies and techniques, including methods of obtaining accurate, complete, and current cost or pricing data and certification as required;
- (c) Methods of evaluating subcontractor responsibility, including the contractor's use of the List of Parties Excluded

from Federal Procurement and Nonprocurement Programs (see 9.404) and, if the contractor has subcontracts with parties on the list, the documentation, systems, and procedures the contractor has established to protect the Government's interests (see 9.405-2);

(d) Treatment accorded affiliates and other concerns having close working arrangements with the contractor;

(e) Policies and procedures pertaining to small business concerns, including small disadvantaged and women-owned small business concerns;

(f) Planning, award, and postaward management of major subcontract programs;

(g) Compliance with Cost Accounting Standards in awarding subcontracts;

(h) Appropriateness of types of contracts used (see 16.103); and

(i) Management control systems, including internal audit procedures, to administer progress payments to subcontractors.

44.304 Surveillance.

(a) The ACO shall maintain a sufficient level of surveillance to ensure that the contractor is effectively managing its purchasing program.

(b) Surveillance shall be accomplished in accordance with a plan developed by the ACO with the assistance of subcontracting, audit, pricing, technical, or other specialists as necessary. The plan should cover pertinent phases of a contractor's purchasing system (preaward, postaward, performance, and contract completion) and pertinent operations that affect the contractor's purchasing and subcontracting. The plan should also provide for reviewing the effectiveness of the contractor's corrective actions taken as a result of previous Government recommendations. Duplicative reviews of the same areas by CPSR and other surveillance monitors should be avoided.

44.305 Granting, withholding, or withdrawing approval.

44.305-1 Responsibilities.

The cognizant ACO is responsible for granting, withholding, or withdrawing approval of a contractor's purchasing system. The ACO shall—

(a) Approve a purchasing system only after determining that the contractor's purchasing policies and practices are efficient and provide adequate protection of the Government's interests; and

(b) Promptly notify the contractor in writing of the granting, withholding, or withdrawal of approval.

44.305-2 Notification.

(a) The notification granting system approval shall include—

(1) Identification of the plant or plants covered by the approval;

(2) The effective date of approval; and

(3) A statement that system approval—

(i) Applies to all Federal Government contracts at that plant to the extent that cross-servicing arrangements exist;

(ii) Waives the contractual requirement for advance notification in fixed-price contracts, but not for cost-reimbursement contracts;

(iii) Waives the contractual requirement for consent to subcontracts in fixed-price contracts and for specified subcontracts in cost-reimbursement contracts but not for those subcontracts, if any, selected for special surveillance and identified in the contract Schedule; and

(iv) May be withdrawn at any time at the ACO's discretion.

(b) In exceptional circumstances, consent to certain subcontracts or classes of subcontracts may be required even though the contractor's purchasing system has been approved. The system approval notification shall identify the class or classes of subcontracts requiring consent. Reasons for selecting the subcontracts include the fact that a CPSR or continuing surveillance has revealed sufficient weaknesses in a particular area of subcontracting to warrant special attention by the ACO.

(c) When recommendations are made for improvement of an approved system, the contractor shall be requested to reply within 15 days with a position regarding the recommendations.

44.305-3 Withholding or withdrawing approval.

(a) The ACO shall withhold or withdraw approval of a contractor's purchasing system when there are major weaknesses or when the contractor is unable to provide sufficient information upon which to make an affirmative determination. The ACO may withdraw approval at any time on the basis of a determination that there has been a deterioration of the contractor's purchasing system or to protect the Govern-

ment's interest. Approval shall be withheld or withdrawn when there is a recurring noncompliance with requirements, including but not limited to—

(1) Cost or pricing data (see 15.403);

(2) Implementation of cost accounting standards (see 48 CFR Chapter 99 (FAR Appendix, loose-leaf edition));

(3) Advance notification as required by the clauses prescribed in 44.204; or

(4) Small business subcontracting.

(b) When approval of the contractor's purchasing system is withheld or withdrawn, the ACO shall within 10 days after completing the in-plant review (1) inform the contractor in writing, (2) specify the deficiencies that must be corrected to qualify the system for approval, and (3) request the contractor to furnish within 15 days a plan for accomplishing the necessary actions. If the plan is accepted, the ACO shall make a follow-up review as soon as the contractor notifies the ACO that the deficiencies have been corrected.

44.306 Disclosure of approval status.

Upon request, the ACO may inform a contractor that the purchasing system of a proposed subcontractor has been approved or disapproved, but shall caution that the Government will not keep the contractor advised of any changes in the approval status. If the proposed subcontractor's purchasing system has not been reviewed, the contractor shall be so advised.

44.307 Reports.

The ACO shall distribute copies of CPSR reports; notifications granting, withholding, or withdrawing system approval; and Government recommendations for improvement of an approved system, including the contractor's response, to at least—

(a) The cognizant contract audit office;

(b) Activities prescribed by the cognizant agency; and

(c) The contractor (except that furnishing copies of the contractor's response is optional).

Subpart 44.4—Subcontracts for Commercial Items and Commercial Components

44.400 Scope of subpart.

This subpart prescribes the policies limiting the contract clauses a prime contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with Section 8002(b)(2) (Public Law 103-355).

44.401 Applicability.

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term “subcontract” has the same meaning as defined in Part 12.

44.402 Policy requirements.

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or non-developmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are furnishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at 52.244-6 are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at 52.244-6 only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244-6, Subcontracts for Commercial Items and Commercial Components, in solicitations and contracts for supplies or services other than commercial items.

* * * * *

PART 45—GOVERNMENT PROPERTY

Sec.

- 45.000 Scope of part.
- Subpart 45.1—General**
- 45.101 Definitions.
- 45.102 Policy.
- 45.103 Responsibility and liability for Government property.
- 45.104 Review and correction of contractors' property control systems.
- 45.105 Records of Government property.
- 45.106 Government property clauses.
- Subpart 45.2—Competitive Advantage**
- 45.201 General.
- 45.202 Evaluation procedures.
- 45.202-1 Rental equivalents.
- 45.202-2 Rent.
- 45.202-3 Other costs and savings.
- 45.203 Postaward utilization requests.
- 45.204 Residual value of special tooling and special test equipment.
- 45.205 Solicitation requirements.
- Subpart 45.3—Providing Government Property to Contractors**
- 45.300 Scope of subpart.
- 45.301 Definitions.
- 45.302 Providing facilities.
- 45.302-1 Policy.
- 45.302-2 Facilities contracts.
- 45.302-3 Other contracts.
- 45.302-4 Contractor use of Government-owned and -operated test facilities.
- 45.302-5 Standby or layaway requirements.
- 45.302-6 Required Government property clauses for facilities contracts.
- 45.302-7 Optional property-related clauses for facilities contracts.
- 45.303 Providing material.
- 45.303-1 Policy.
- 45.303-2 Procedures.
- 45.304 Providing motor vehicles.
- 45.305 [Reserved]
- 45.306 Providing special tooling.
- 45.306-1 Providing existing special tooling.
- 45.306-2 Special tooling under cost-reimbursement contracts.
- 45.306-3 Special tooling under fixed-price contracts.
- 45.306-4 [Reserved]
- 45.306-5 Contract clause.
- 45.307 Providing special test equipment.
- 45.307-1 General.
- 45.307-2 Acquiring special test equipment.
- 45.307-3 Contract clause.
- 45.308 Providing Government production and research property "as is."
- 45.308-1 General.
- 45.308-2 Contract clause.
- 45.309 Providing Government production and research property under special restrictions.
- 45.310 Providing agency-peculiar property.
- 45.311 Providing Government property by transfer.
- Subpart 45.4—Contractor Use and Rental of Government Property**
- 45.400 Scope of subpart.
- 45.401 Policy.
- 45.402 Authorizing use of Government production and research property.
- 45.403 Rental—Use and Charges clause.
- 45.404 Rent-free use.
- 45.405 Contracts with foreign governments or international organizations.
- 45.406 Use of Government production and research property on independent research and development programs.
- 45.407 Non-Government use of plant equipment.
- Subpart 45.5—Management of Government Property in the Possession of Contractors**
- 45.500 Scope of subpart.
- 45.501 Definitions.
- 45.502 Contractor responsibility.
- 45.502-1 Receipts for Government property.
- 45.502-2 Discrepancies incident to shipment.
- 45.503 Relief from responsibility.
- 45.504 Contractor's liability.
- 45.505 Records and reports of Government property.
- 45.505-1 Basic information.
- 45.505-2 Records of pricing information.
- 45.505-3 Records of material.
- 45.505-4 Records of special tooling and special test equipment.
- 45.505-5 Records of plant equipment.
- 45.505-6 Special reports of plant equipment.
- 45.505-7 Records of real property.
- 45.505-8 Records of scrap or salvage.
- 45.505-9 Records of related data and information.
- 45.505-10 Records of completed products.
- 45.505-11 Records of transportation and installation costs of plant equipment.
- 45.505-12 Records of misdirected shipments.
- 45.505-13 Records of property returned for rework.
- 45.505-14 Reports of Government property.
- 45.506 Identification.
- 45.507 Segregation of Government property.

MATERIALS MANAGEMENT ACQUISITION REGULATION

- 45.508 Physical inventories.
 - 45.508-1 Inventories upon termination or completion.
 - 45.508-2 Reporting results of inventories.
 - 45.508-3 Quantitative and monetary control.
 - 45.509 Care, maintenance, and use.
 - 45.509-1 Contractor's maintenance program.
 - 45.509-2 Use of Government property.
 - 45.510 Property in possession of subcontractors.
 - 45.511 Audit of property control system.
- Subpart 45.6—Reporting, Redistribution, and Disposal of Contractor Inventory**
- 45.600 Scope of subpart.
 - 45.601 Definitions.
 - 45.602 [Reserved]
 - 45.603 Disposal methods.
 - 45.604 Restrictions on purchase or retention of contractor inventory.
 - 45.605 Contractor-acquired property.
 - 45.605-1 Purchase or retention at cost.
 - 45.605-2 Return to suppliers.
 - 45.605-3 Cost-reimbursement contracts.
 - 45.606 Inventory schedules.
 - 45.606-1 Submission.
 - 45.606-2 Common items.
 - 45.606-3 Acceptance.
 - 45.606-4 Withdrawals.
 - 45.606-5 Instructions for preparing and submitting schedules of contractor inventory.
 - 45.607 Scrap.
 - 45.607-1 General.
 - 45.607-2 Recovering precious metals.
 - 45.608 Screening of contractor inventory.
 - 45.608-1 General.
 - 45.608-2 Standard screening.
 - 45.608-3 Agency screening.
 - 45.608-4 Limited screening.
 - 45.608-5 Special items screening.
 - 45.608-6 [Reserved]
 - 45.608-7 Reimbursement of costs for transfer of contractor inventory.
 - 45.608-8 [Reserved]
 - 45.609 [Reserved]
 - 45.610 Sale of surplus contractor inventory.
 - 45.610-1 Responsibility.
 - 45.610-2 [Reserved]
 - 45.610-3 Proceeds of sale.
 - 45.610-4 Contractor inventory in foreign countries.
 - 45.611 Destruction or abandonment.
 - 45.612 Removal and storage.
 - 45.612-1 General.
 - 45.612-2 Special storage at the contractor's risk.
 - 45.612-3 Special storage at the Government's expense.
 - 45.613 Property disposal determinations.
 - 45.614 Subcontractor inventory.
 - 45.615 Accounting for contractor inventory.

45.000 Scope of part.

This part prescribes policies and procedures for providing Government property to contractors, contractors' use and management of Government property, and reporting, redistributing, and disposing of contractor inventory. It does not apply to providing property under any statutory leasing authority, except as to non-Government use of plant equipment under 45.407; to property to which the Government has acquired a lien or title solely because of partial, advance, or progress payments; or to disposal of real property.

Subpart 45.1—General**45.101 Definitions.**

(a) "Contractor-acquired property," as used in this part, means property acquired or otherwise provided by the contractor for performing a contract and to which the Government has title.

"Government-furnished property," as used in this part, means property in the possession of, or directly acquired by, the Government and subsequently made available to the contractor.

"Government property," means all property owned by or leased to the Government or acquired by the Government under the terms of the contract. It includes both Government-furnished property and contractor-acquired property as defined in this section.

"Plant equipment," as used in this part, means personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plant purpose. It does not include special tooling or special test equipment.

"Property," as used in this part, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property.

"Real property," as used in this part, means land and rights in land, ground improvements, utility distribution systems, and buildings and other structures. It does not include foundations and other work necessary for installing special tooling, special test equipment, or plant equipment.

"Special test equipment," as used in this part, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

"Special tooling," as used in this part, means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacement of these items, which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items.

(b) Additional definitions also applying throughout this part appear in those subparts where the terms are most frequently used.

45.102 Policy.

Contractors are ordinarily required to furnish all property necessary to perform Government contracts. However, if contractors possess Government property, MMS shall—

(a) Eliminate to the maximum practical extent any competitive advantage that might arise from using such property;

(b) Require contractors to use Government property to the maximum practical extent in performing Government contracts;

(c) Permit the property to be used only when authorized;

(d) Charge appropriate rentals when the property is authorized for use on other than a rent-free basis;

(e) Require contractors to be responsible and accountable for, and keep the Government's official records of Government property in their possession or control (but see 45.105);

(f) Require contractors to review and provide justification for retaining Government property not currently in use; and

(g) Ensure maximum practical reutilization of contractor inventory (see 45.601) within the Government.

45.103 Responsibility and liability for Government property.

(a) Contractors are responsible and liable for Government property in their possession, unless otherwise provided by the contract.

(b) Generally, Government contracts do not hold contractors liable for loss of or damage to Government property when the property is provided under—

(1) Negotiated fixed-price contracts for which the contract price is not based upon an exception at 15.403-1;

(2) Cost-reimbursement contracts;

(3) Facilities contracts; or

(4) Negotiated or sealed bid service contracts performed on a Government installation where the contracting officer determines that the contractor has little direct control over the Government property because it is located on a Government

installation and is subject to accessibility by personnel other than the contractor's employees and that by placing the risk on the contractor, the cost of the contract would be substantially increased.

(c) When justified by the circumstances, the contract may require the contractor to assume greater liability for loss of or damage to Government property than that contemplated by the Government property clauses or the clause at 52.245 8, Liability for the Facilities. For example, this may be the case when the contractor is using Government property primarily for commercial work rather than Government work.

(d) If the Government provides Government property directly to a subcontractor, the terms of paragraph (b) of this section shall apply to the subcontractor.

(e) Subcontractors are liable for loss of or damage to Government property furnished through a prime contractor. However, if the prime contract is of a type listed in paragraph (b)(1) or (2) of this section, the prime contractor may, after obtaining the contracting officer's consent, reduce the subcontractor's liability by including in the subcontract a clause similar to paragraph (g), Limited risk of loss, as provided in Alternate I of the clause at 52.245-2, Government Property (Fixed-Price Contracts), (for fixed-price contracts) or similar to the same paragraph of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (for cost-reimbursement contracts). Before consenting to a clause that reduces the subcontractor's liability, the contracting officer should ensure that the Government's interests are sufficiently protected.

(f) A prime contractor that provides Government property to a subcontractor shall not be relieved of any responsibility to the Government that the prime contractor may have under the terms of the prime contract.

45.104 Review and correction of contractors' property control systems.

(a) The review and approval of a contractor's property control system shall be accomplished by the agency responsible for contract administration at a contractor's plant or installation. The review and approval of a contractor's property control system by one agency shall be binding on all other departments and agencies based on interagency agreements.

(b) The contracting officer or the representative assigned the responsibility as property administrator shall review contractors' property control systems to ensure compliance with the Government property clauses of the contract.

(c) The property administrator shall notify the contractor in writing when its property control system does not comply with Subpart 45.5 or other contract requirements and shall request prompt correction of deficiencies. If the contractor does not correct the deficiencies within a reasonable period, the property administrator shall request action by the con-

tracting officer administering the contract. The contracting officer shall—

(1) Notify the contractor in writing of any required corrections and establish a schedule for completion of actions;

(2) Caution the contractor that failure to take the required corrective actions within the time specified will result in withholding or withdrawing system approval; and

(3) Advise the contractor that its liability for loss of or damage to Government property may increase if approval is withheld or withdrawn.

45.105 Records of Government property.

(a) Contractor records of Government property established and maintained under the terms of the contract are the Government's official Government property records. Duplicate official records shall not be furnished to or maintained by Government personnel, except as provided in paragraph (b) of this section.

(b) Contracts may provide for the contracting office to maintain the Government's official Government property records when the contracting office retains contract administration and Government property is furnished to a contractor—

(1) For repair or servicing and return to the shipping organization;

(2) For use on a Government installation;

(3) Under a local support service contract;

(4) Under a contract with a short performance period; or

(5) When otherwise determined by the contracting officer to be in the Government's interest.

45.106 Government property clauses.

This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.

(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.

(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) of this section.

(2) If the contract is—

(i) A negotiated fixed-price contract for which prices are not based on an exception at 15.403-1; or

(ii) A fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.

(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.

(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract

with an educational or nonprofit organization is contemplated.

(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold, purchase orders for property repair need not include a Government property clause.

(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) of this section.

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.

Subpart 45.2—Competitive Advantage

45.201 General.

(a) The contracting officer shall, to the maximum practical extent, eliminate competitive advantage accruing to a contractor possessing Government production and research property (see 45.301). This is done by (1) adjusting the offers of those contractors by applying, for evaluation purposes only, a rental equivalent evaluation factor or, (2) when adjusting offers is not practical, by charging the contractor rent for using the property. Applying a rental equivalent factor is not appropriate in awarding negotiated contracts when the contracting officer determines that using the factor would not affect the choice of contractors.

(b) In evaluating offers, the contracting officer shall also consider any costs or savings to the Government related to providing such property, regardless of any competitive advantage that may result (see 45.202-3).

45.202 Evaluation procedures.

45.202-1 Rental equivalents.

If a rental equivalent evaluation factor is used, it shall be equal to the rent allocable to the proposed contract that would otherwise have been charged for the property, as computed in accordance with the clause at 52.245-9, Use and Charges. (See 45.205(b) for solicitation requirements.)

45.202-2 Rent.

If using a rental equivalent evaluation factor is not practical, and the competitive advantage is to be eliminated by charging rent, any offeror or subcontractor may use Government production and research property after obtaining the written approval of the contracting officer having cognizance of the property. Rent shall be charged in accordance with 45.403.

45.202-3 Other costs and savings.

(a) If furnishing Government production and research property will result in direct measurable costs that the Government must bear, additional factors shall be considered in evaluating bids or proposals. These factors shall be specified in the solicitation either as dollar amounts or as formulas and shall be limited to the cost of—

- (1) Reactivation from storage;
- (2) Rehabilitation and conversion; and
- (3) Making the property available on an f.o.b. basis.

(b) If, under the terms of the solicitation, the contractor will bear the transportation cost of furnishing Government production and research property or the cost of making it suitable for use (such as when property is offered on an “as is” basis (see 45.308)), no additional evaluation factors related to those costs shall be used.

(c) If using Government production and research property will result in measurable savings to the Government, the dollar amount of these savings shall be specified in the solicitation and used in evaluating offers. Examples of such savings include—

(1) Savings occurring as a direct result of activating tools being maintained in idle status at known cost to the Government; and

(2) Avoiding the costs of deactivating and placing tools in layaway or storage or of maintaining them in an idle state, if the prospective costs are known. For these costs to be included in the evaluation, firm decisions must have been made that the tools will be laid away or stored if not used on the proposed contract and that such costs are not merely being deferred.

45.203 Postaward utilization requests.

When, after award, a contractor requests the use of special tooling or special test equipment, the administrative contracting officer shall obtain a fair rental or other adequate consideration if use is authorized. The value of the items, if known, and any amount included for them in the contract price shall be considered.

45.204 Residual value of special tooling and special test equipment.

(a) In awarding competitively negotiated contracts that permit the acquisition of special tooling or special test equipment, an evaluation may be made of the residual value of the property to the Government. This evaluation is appropriate when the contracting officer (1) determines that the property will have a reasonably foreseeable usefulness and related residual value beyond the period of use on the proposed contract and (2) anticipates that the cost of the property (as proposed by the several offerors) may be a factor in making the award. This evaluation is not appropriate if the contract will include the special tooling or special test equipment as a contract line item.

(b) The purpose of evaluating the residual value of special tooling or special test equipment is to apportion to each proposal only that part of the total cost of the property that represents the amount of useful life to be consumed during contract performance. Accordingly, the proposed price or cost may be reduced for evaluation purposes by an amount representing the residual value of such property to the Government. In estimating residual value, the contracting officer shall consider—

(1) The useful life of the special tooling and special test equipment to be acquired;

(2) Adaptability of the property for use by other contractors or by the Government;

(3) Reasonably foreseeable requirements for future use of the property; and

(4) The scrap or salvage value of the property.

(c) If the contracting officer decides to consider the residual value of special tooling or special test equipment, the solicitation shall so notify offerors and state the Government's reasonably foreseeable future requirements for the property.

45.205 Solicitation requirements.

(a) When Government production and research property (see 45.301) is offered for use in a competitive acquisition, solicitations will ordinarily require the contractor to assume all costs related to making the property available for use (such as payment of all transportation or rehabilitation costs).

(b) The solicitation shall describe the evaluation procedures to be followed, including rental charges or equivalents (see 45.202) and other costs or savings to be evaluated (see 45.202-3), and shall require all offerors to submit with their offers the following information:

(1) A list or description of all Government production and research property that the offeror or its subcontractors propose to use on a rent-free basis. The list shall include property offered for use in the solicitation, as well as property already in possession of the offeror and its subcontractors under other contracts.

(2) Identification of the facilities contract or other instrument under which property already in possession of the offeror and its subcontractors is held, and the written permission for its use from the contracting officer having cognizance of the property.

(3) The dates during which the property will be available for use (including the first, last, and all intervening months) and, for any property that will be used concurrently in performing two or more contracts, the amounts of the respective uses in sufficient detail to support proration of the rent.

(4) The amount of rent that would otherwise be charged, computed in accordance with 45.403.

(c) Solicitations shall provide that using Government production and research property (other than as described and permitted in the solicitation (see paragraph (b) of this section)) will not be authorized under the contract unless such use is approved in writing by the contracting officer cognizant of the property, and either rent calculated in accordance with the clause at 52.245-9, Use and Charges, is charged, or the contract price is reduced by an equivalent amount. (See 45.203 for postaward requests for special tooling and special test equipment and 45.204(c) for solicitation requirements for special tooling and special test equipment with residual value.)

Subpart 45.3—Providing Government Property to Contractors

45.300 Scope of subpart.

This subpart prescribes policies and procedures for providing Government property to contractors.

45.301 Definitions.

“Agency-peculiar property,” as used in this subpart, means Government-owned personal property that is peculiar to the mission of one agency (*e.g.*, military or space property). It excludes Government material, special test equipment, special tooling, and facilities.

“Facilities,” as used in this subpart and when used in other than a facilities contract, means property used for production, maintenance, research, development, or testing. It includes plant equipment and real property (see 45.101). It does not include material, special test equipment, special tooling, or agency-peculiar property.

“Facilities contract,” as used in this subpart, means a contract under which Government facilities are provided to a contractor or subcontractor by the Government for use in connection with performing one or more related contracts for supplies or services. It is used occasionally to provide special tooling or special test equipment. Facilities contracts may take any of the following forms:

- (a) A facilities acquisition contract providing for the acquisition, construction, and installation of facilities.
- (b) A facilities use contract providing for the use, maintenance, accountability, and disposition of facilities.
- (c) A consolidated facilities contract, which is a combination of a facilities acquisition and a facilities use contract.

“Government production and research property,” as used in this subpart, means Government-owned facilities, Government-owned special test equipment, and special tooling to which the Government has title or the right to acquire title.

“Material,” as used in this subpart, means property that may be incorporated into or attached to a deliverable end item or that may be consumed or expended in performing a contract. It includes assemblies, components, parts, raw and processed materials, and small tools and supplies that may be consumed in normal use in performing a contract.

“Nonprofit organization,” as used in this subpart, means any corporation, foundation, trust, or institution operated for scientific, educational, or medical purposes, not organized for profit, and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

“Nonseverable,” as used in this subpart, when related to Government production and research property, means property that cannot be removed after erection or installation without substantial loss of value or damage to the property or to the premises where installed.

45.302 Providing facilities.

45.302-1 Policy.

(a) Contractors shall furnish all facilities required for performing Government contracts except as provided in this subsection. Government facilities provided to contractors shall be individually identified in the solicitation, if possible, and contract. Agencies shall not furnish facilities to contractors for any purpose, including restoration, replacement, or modernization, except as follows:

- (1) For use in a Government-owned, contractor-operated plant operated on a cost-plus-fee basis.
- (2) For support of industrial preparedness programs.
- (3) As components of special tooling or special test equipment acquired or fabricated at Government expense.
- (4) When, as a result of the prospective contractor's written statement asserting inability to obtain facilities, the agency head or designee issues a Determination and Finding (see Subpart 1.7) that the contract cannot be fulfilled by any other practical means or that it is in the public interest to provide the facilities.

(i) If the contractor's inability to provide facilities is due to insufficient lead time, the Government may provide existing facilities until the contractor's facilities can be installed.

(ii) Mere assertion by a contractor that it is unable to provide facilities is not, in itself, sufficient to justify approval. Appropriate Government officials must determine that providing Government facilities is justified.

(iii) The determination shall include findings that private financing of the facilities was sought but not available or that private financing was determined not advantageous to the Government. The determination shall also state that the contract cannot be accomplished without Government facilities being provided.

(iv) The original determination shall be included in the contract file.

(v) No determination is required when the facilities are provided as components of special tooling or special test equipment acquired or fabricated at Government expense.

(5) As otherwise authorized by law or regulation.

(b) MMS shall not—

(1) Furnish new facilities to contractors unless existing Government-owned facilities are either inadequate or cannot be economically furnished;

(2) Use research and development funds to provide contractors with new construction or improvements of general utility, unless authorized by law; or

(3) Provide facilities to contractors solely for non-Government use, unless authorized by law.

(c) Competitive solicitations shall not include an offer by the Government to provide new facilities, nor shall solicitations offer to furnish existing Government facilities that must

be moved into a contractor's plant, unless adequate price competition cannot be otherwise obtained. Such solicitations shall require contractors to identify the Government-owned facilities desired to be moved into their plants.

(d) Government facilities with a unit cost of less than \$10,000 shall not be provided to contractors unless—

(1) The contractor is a nonprofit institution of higher education or other nonprofit organization whose primary purpose is the conduct of scientific research;

(2) A contractor is operating a Government-owned plant on a cost-plus-fee basis;

(3) A contractor is performing on a Government establishment or installation;

(4) A contractor is performing under a contract specifying that it may acquire or fabricate special tooling, special test equipment, and components thereof subsequent to obtaining the approval of the contracting officer; or

(5) The facilities are unavailable from other than Government sources.

45.302-2 Facilities contracts.

(a) Facilities shall be provided to a contractor or subcontractor only under a facilities contract using the appropriate clauses required by 45.302-6, except as provided in 45.302-3.

(b) All facilities provided by a contracting activity for use by a contractor at any one plant or general location shall be governed by a single facilities contract, unless the contracting officer determines this to be impractical. Each agency should consolidate, to the maximum practical extent, its facility contracts covering specific contractor locations.

(c) No fee shall be allowed under a facilities contract. Profit or fee (plus or minus) shall be considered in awarding any related supply or service contract, consistent with the profit guidelines of 15.404-4.

(d) Special tooling and special test equipment will normally be provided to a contractor under a supply contract, but may be provided under a facilities contract when administratively desirable.

(e) MMS shall ensure that facility projects involving real property transactions comply with applicable laws (e.g., 41 U.S.C. 12 and 14).

45.302-3 Other contracts.

(a) Facilities may be provided to a contractor under a contract other than a facilities contract when one of the following exceptions applies—

(1) The actual or estimated cumulative acquisition cost of the facilities provided by the contracting activity to the contractor at one plant or general location does not exceed \$1,000,000;

(2) The number of items of plant equipment provided is ten or fewer;

(3) The contract performance period is twelve months or less;

(4) The contract is for construction;

(5) The contract is for services and the facilities are to be used in connection with the operation of a Government-owned plant or installation; or

(6) The contract is for work within an establishment or installation operated by the Government.

(b) When a facilities contract is not used, the Government's interest shall normally be protected by using the appropriate Government property clause or, in the case of paragraph (a)(5) of this subsection, by appropriate portions of the facilities clauses.

(c) No profit or fee shall be allowed on the cost of the facilities when purchased for the account of the Government under other than a facilities contract. General purpose components of special tooling or special test equipment are not facilities.

45.302-4 Contractor use of Government-owned and -operated test facilities.

(a) MMS may authorize onsite use by contractors of existing Government-owned and -operated test facilities in connection with Government contracts only when—

(1) No adequate commercial test capability is available;

(2) Substantial cost savings will result from using the Government-owned test facilities; or

(3) Otherwise authorized by law.

(b) When such use is authorized, the contracting officer shall obtain adequate consideration comparable to commercial rates.

45.302-5 Standby or layaway requirements.

A facilities contract may include requirements for maintenance and storage of Government production and research property in standby or layaway status. The contract shall include appropriate specifications for the care and maintenance of the property. If the Government is required to pay the contractor for maintenance and storage, the contract shall define what constitutes standby or lay-away and specify when payments will begin and end. The contract may provide for reimbursing the contractor for any State or local property tax it is required to pay because of its possession of or interest in such property (see 31.205-41).

45.302-6 Required Government property clauses for facilities contracts.

(a) The contracting officer shall insert the clause at 52.245-7, Government Property (Consolidated Facilities), in solicitations and contracts when a consolidated facilities contract is contemplated (see 45.301).

(b) The contracting officer shall insert the clause at 52.245-8, Liability for the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities

acquisition contract, or a facilities use contract is contemplated (see 45.301).

(c) The contracting officer shall insert the clause at 52.245-9, Use and Charges, in solicitations and contracts—

(1) When a consolidated facilities contract or a facilities use contract (see 45.301); or

(2) When a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis.

(d) The contracting officer shall insert the clause at 52.245-10, Government Property (Facilities Acquisition), in solicitations and contracts when a facilities acquisition contract is contemplated (see 45.301).

(e)(1) The contracting officer shall insert the clause at 52.245-11, Government Property (Facilities Use), in solicitations and contracts when a facilities use contract is contemplated (see 45.301).

(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education, or is awarded to a nonprofit organization whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.

45.302-7 Optional property-related clauses for facilities contracts.

(a) The contracting officer may insert the clause at 52.245-12, Contract Purpose (Nonprofit Educational Institutions), in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(b) The contracting officer may insert the clause at 52.245-13, Accountable Facilities (Nonprofit Educational Institutions), in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(c) The contracting officer may insert the clause at 52.245-14, Use of Government Facilities, in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution (also see 45.302-6).

(d) The contracting officer may, under a proper delegation of authority, insert the clause at 52.245-15, Transfer of Title to the Facilities, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated for the conduct of basic or applied research at nonprofit institutions of higher education, or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.015 and 45.302-6).

(e) The contracting officer may insert the clause at 52.245-16, Facilities Equipment Modernization, in solicitations and contracts when a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is

contemplated under which the Government will provide modernized or replacement facilities.

45.303 Providing material.

45.303-1 Policy.

Contractors shall ordinarily furnish all material for performing Government contracts. However, agencies should provide material to a contractor when necessary to achieve significant economy, standardization, or expedited production, or when it is otherwise in the Government's interest.

45.303-2 Procedures.

Solicitations shall specify material that the Government will furnish in sufficient detail (including requisitioning procedures) to enable offerors to evaluate it accurately. The contracting officer shall insert the appropriate Government property clause prescribed in 45.106, in all solicitations when the Government will provide material.

45.304 Providing motor vehicles.

(a) Contractors shall ordinarily furnish any motor vehicles needed in performing Government contracts. Agencies may provide contractors with motor vehicles only when—

(1) The number of vehicles required for use by contractor personnel is predictable and expected to remain fairly constant;

(2) The proposed contract will bear the entire cost of the vehicle program;

(3) The motor vehicles will not be used on any contract other than that for which the vehicles were provided, unless approved by the appropriate department or agency official;

(4) Prospective contractors do not have or would not be expected to have an existing and continuing capability for providing the vehicles from their own resources; and

(5) Substantial savings are expected.

(b) Agencies that provide contractors with Government-owned-or-leased motor vehicles are responsible for ensuring that such vehicles are used only for the performance of the contract. Under 41 CFR 101-38.301-1, contractors are prohibited from using such vehicles for home-to-work transportation consistent with Pub. L. 99-550 amending 31 U.S.C. 1344. (See Subpart 51.2, Contractor Use of Interagency Fleet Management System (IFMS) Vehicles.)

45.305 [Reserved]

45.306 Providing special tooling.

45.306-1 Providing existing special tooling.

(a) The contracting officer shall offer existing Government special tooling to prospective contractors for use in Government work if it will not disrupt programs of equal or higher

priority, it is otherwise advantageous to the Government, and use of the special tooling is authorized under 45.402(a). (See also 45.308 and 45.309.)

(b) Contracts authorizing the furnishing of existing special tooling shall contain a description of the special tooling, the terms and conditions of shipment, and the terms covering the cost of adapting and installing the tooling.

45.306-2 Special tooling under cost-reimbursement contracts.

Title to special tooling under cost-reimbursement contracts is acquired by the Government in all cases. The clause used for this purpose is 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

45.306-3 Special tooling under fixed-price contracts.

(a) *Criteria for acquisition.* In deciding whether or not to acquire title to special tooling, or rights to title, under fixed-price contracts, the contracting officer shall consider the following factors:

(1) The current or probable future need of the Government for the items involved (including in-house use) and the estimated cost of producing them if not acquired.

(2) The estimated residual value of the items.

(3) The administrative burden and other expenses incident to reporting, recordkeeping, preparation, handling, transportation, and storage.

(4) The feasibility and probable cost of making the items available to other offerors in the event of future acquisitions.

(5) The amount offered by the contractor for the right to retain the items.

(6) The effect on future competition and contract pricing.

(b) *Decision not to acquire special tooling.* In contracts in which the Government will not acquire title to special tooling, or rights to title, special requirements may be included in the Schedule of the contract (*e.g.*, requirement governing the contractor's capitalization of special tooling costs).

45.306-4 [Reserved]

45.306-5 Contract clause.

The contracting officer shall insert the clause at 52.245-17, Special Tooling, in solicitations and contracts when a fixed-price contract is contemplated, and either the contract will include special tooling provided by the Government or the Government will acquire title or right to title in special tooling to be acquired or fabricated by the contractor for the Government, other than special tooling to be delivered as an end item under the contract. The Special Tooling clause shall apply to all special tooling accountable to the contract.

45.307 Providing special test equipment.

45.307-1 General.

(a) Contracting officers shall offer existing Government-owned special test equipment to contractors, consistent with the conditions in 45.306-1(a). (See also 45.308 and 45.309.)

(b) Contracting officers may also authorize contractors to acquire special test equipment for the Government when it is advantageous to the Government under the criteria in 45.306-3(a) and existing special test equipment is not available.

45.307-2 Acquiring special test equipment.

(a) When special test equipment or components are known, the solicitation (and the contract) shall separately identify each item to be furnished by the Government or acquired or fabricated by the contractor for the Government. Individual items of less than \$5,000 may be grouped by category.

(b) *Notice and approval.* Under negotiated contracts containing the clause at 52.245-18, Special Test Equipment, the contractor must notify the contracting officer if it intends to acquire or fabricate special test equipment. Within 30 days of receipt of the notice, the contracting officer shall—

(1) Review the proposed items for necessity and proper classification as “special” test equipment;

(2) Screen the availability of existing Government-owned test equipment in accordance with agency procedures; and

(3) Notify the contractor, approving or disapproving the acquisition or fabrication and, if it is disapproved, state whether the equipment will be furnished by the Government.

45.307-3 Contract clause.

The contracting officer shall insert the clause at 52.245-18, Special Test Equipment, in solicitations and contracts when contracting by negotiation and the contractor will acquire or fabricate special test equipment for the Government but the exact identification of the special test equipment to be acquired or fabricated is unknown.

45.308 Providing Government production and research property “as is.”

45.308-1 General.

(a) The contracting officer may provide Government production and research property on an “as is” basis for performing fixed-price, time-and-material, and labor-hour contracts. It may also be furnished under a facilities contract, in which case the contract shall state that the contractor will not be reimbursed for transporting, installing, modifying, repairing, or otherwise making the property ready for use.

(b) When the property is provided under other than a facilities contract, the solicitation shall state that—

(1) Offerors may inspect the property before submitting offers and the conditions under which it may be inspected;

(2) The property is offered in its current condition, f.o.b. present location (provide specific locations);

(3) Offerors must satisfy themselves that the property is suitable for their use;

(4) The successful offeror shall bear the cost of transporting, installing, modifying, repairing, or otherwise making the property suitable for use; and

(5) Evaluations will be made in accordance with Subpart 45.2 to eliminate any competitive advantage resulting from using the property.

45.308-2 Contract clause.

The contracting officer shall insert the clause at 52.245-19, Government Property Furnished “As Is,” in solicitations and contracts when a contract other than a consolidated facilities contract, a facilities acquisition contract, or a facilities use contract is contemplated and Government production and research property is to be furnished “as is” (see 45.106 for additional clauses that may be required).

45.309 Providing Government production and research property under special restrictions.

(a) Government production and research property, other than foundations and similar improvements necessary for installing special tooling, special test equipment, or plant equipment, shall not be installed or constructed on land not owned by the Government in such fashion as to be nonseverable, unless the head of the contracting activity determines that the location is necessary, and the contract under which the property is provided contains—

(1) A requirement for the contractor to reimburse the Government for the fair value of the property at contract completion or termination or within a reasonable time thereafter (for example, the provision may require the contractor to purchase the property at a value determined by appraisal or at a price equal to its acquisition cost less depreciation at a specified rate);

(2) An option for the Government to acquire the underlying land; or

(3) An alternative provision that the agency head considers adequate to protect the Government’s interests.

(b) If patent or other proprietary rights of a contractor may restrict the disposal of Government production and research property, the condition in either paragraph (a)(1) or (a)(3) of this section shall be satisfied before the property is provided.

(c) If Government production and research property is not available to all offerors, the solicitation shall identify the offerors to whom the property is available.

45.310 Providing agency-peculiar property.

(a) Agency-peculiar property may be furnished to contractors when necessary for use as a standard or model, for testing the contractor’s end item where suitable commercial equipment is not available, to establish equipment compatibility, or for other reasons that the contracting officer determines to be in the Government’s interest.

(b) Agency-peculiar property may be furnished under a facilities contract, a supply or service contract containing the appropriate Government Property clause, or a special bailment agreement.

(c) Contracting officers shall provide special instructions for security, liability, maintenance, and/or property control, when agency-peculiar property requires special handling or safeguards.

45.311 Providing Government property by transfer.

Government property shall be transferred only if there is a requirement under the gaining contract. Transfers of Government property, as Government-furnished property, shall be documented by a modification to the gaining contract. A modification or other documentation listing all items of property transferred is required for the losing contract.

Subpart 45.4—Contractor Use and Rental of Government Property

45.400 Scope of subpart.

This subpart prescribes policies and procedures for contractor use and rental of Government production and research property.

45.401 Policy.

In performing Government contracts or subcontracts, Government production and research property in the possession of contractors or subcontractors shall be used to the greatest possible extent, provided that a competitive advantage is not conferred on the contractor or its subcontractors (see Subpart 45.2). Prior approval of the contracting officer having cognizance of Government production and research property is required for any use, whether Government or non-Government, to ensure that the Government receives adequate consideration. Government use is defined as use in support of U.S. Government contracts and non-Government use is all other use (including direct commercial sales to domestic and foreign customers). As a general rule, Government use is on a rent-free basis. Non-Government use is on a rental basis. When Government production and research property is no longer required for the performance of Government contracts or subcontracts, it shall not continue to be made available to a contractor for non-Government use.

45.402 Authorizing use of Government production and research property.

(a) Contracting officers who believe it to be in the Government's interest for a prospective contractor or subcontractor to use existing Government production and research property shall authorize such use in the contract. The contracting officer shall confirm the availability of the property before authorizing its use on either a rental or rent-free basis.

(b) Unless the solicitation provides for the successful offeror to use Government production and research property in the offeror's possession, the solicitation shall require any offeror desiring to use such property to request the written concurrence of the contracting officer cognizant of the property. To preclude a competitive advantage, the contracting officer's concurrence should include any information required by Subpart 45.2.

(c) The contracting officer shall review the contractor's request for non-Government use of Government production and research property when the property is no longer required for performing Government contracts but is retained for spares or for mobilization and readiness requirements. (Also see 45.302-1(b)(3).)

45.403 Rental—Use and Charges clause.

(a) The contracting officer shall charge contractors rent for using Government production and research property, except as prescribed in 45.404 and 45.405. Rent shall be computed in accordance with the clause at 52.245-9, Use and Charges. If the agency head or designee determines it to be in the Government's interest, rent for classes of production and research property other than plant equipment identified in item (ii) of Table I of the clause at 52.245-9, Use and Charges, may be charged on the basis of use rather than the rental period, or on some other equitable basis. In such cases, the clause at 52.245-9, Use and Charges, shall be appropriately modified.

(b) The contracting officer cognizant of the Government production and research property shall ensure the collection of any rent due the Government from the contractor.

45.404 Rent-free use.

(a) The rental required by 45.403 does not apply to the following Government production and research property:

(1) That which is located in Government-owned, contractor-operated plants operated on a cost-plus-fee basis (but see 45.405).

(2) That which is left in place or installed on contractor-owned property for mobilization or future Government production purposes. However, rent computed in accordance with 45.403(a) shall apply to that portion of property or its capacity used or authorized for use.

(3) Items of equipment that are part of a general program approved by the Federal Emergency Management Agency (FEMA) and present unusual problems in relation to the time required for their preparation for shipment, installation, and operation because of size, complexity, or performance characteristics.

(4) Any other Government production and research property that may be excepted by FEMA.

(b) The contracting officer cognizant of the Government production and research property may grant written authorization for rent-free use of production and research property in the possession of nonprofit organizations when used for research, development, or educational work and—

(1) The use of the property is directly or indirectly in the national interest;

(2) The property will not be used for the direct benefit of a profit-making organization; and

(3) The Government receives some direct benefit (such as rights to use the results of the work without charge) from its use. As a minimum, the contractor shall furnish a report on the work for which the property was provided.

(c) If the contracting officer has obtained adequate price or other consideration, Government production and research property may also be used rent-free under—

(1) Prime contracts that specifically authorize such use without charge; and

(2) Subcontracts of any tier, if the contracting officer awarding the prime contract has specifically authorized rent-free use by the subcontractor.

(d) After award, a contract may be modified to eliminate rent for using Government production and research property. In this case, the contract shall be equitably adjusted to reflect the elimination of rent and any other amount attributable thereto.

45.405 Contracts with foreign governments or international organizations.

Requests by, or for the benefit of, foreign governments or international organizations to use Government production and research property shall be processed and costs shall be recovered or rental charged in accordance with agency procedures.

45.406 Use of Government production and research property on independent research and development programs.

The contracting officer cognizant of Government production and research property in the possession of a contractor may authorize a contractor to use the property on an independent research and development (IR&D) program, if—

(a) Such use will not conflict with the primary use of the property or enable the contractor to retain property that could otherwise be released;

(b) The contractor agrees not to include as a charge against any Government contract the rental value of the property used on its IR&D program; and

(c) A rental charge for the portion of the contractor's IR&D program cost allocated to commercial work, computed in accordance with 45.403, is deducted from any agreed-upon Government share of the contractor's IR&D costs.

45.407 Non-Government use of plant equipment.

Requirements for authorization and dollar thresholds for non-Government use of specific types of plant equipment shall be set at the agency level. The following general policies and requirements shall be used by agencies in supplementing this section:

(a) The contracting officer's advance written approval shall be required for any non-Government use of active plant equipment. Before authorizing non-Government use exceeding 25 percent, the contracting officer shall obtain approval of the head (or designee) of the agency that awarded the contract to which the property is accountable.

(b) The approvals under paragraph (a) of this section may be granted only when it is in the Government's interest—

(1) To keep the equipment in a high state of operational readiness through regular use;

(2) Because substantial savings to the Government would accrue through overhead cost-sharing and receipt of rental; or

(3) To avoid an inequity to a contractor who is required by the Government to retain the equipment in place.

(c) If the contractor's request for non-Government use in excess of 25 percent is approved, the contracting officer may require the contractor to insure the property against loss or damage. Facilities contracts may be modified to require such insurance.

Subpart 45.5—Management of Government Property in the Possession of Contractors

45.500 Scope of subpart.

This subpart prescribes the minimum requirements contractors must meet in establishing and maintaining control over Government property. It applies to contractors organized for profit and, except as otherwise noted, to non-profit organizations. In order for the special requirements in this subpart governing nonprofit organizations to apply, the contract must identify the contractor as a nonprofit organization. If there is any inconsistency between this subpart and the terms of the contract under which the Government property is provided, the terms of the contract shall govern.

45.501 Definitions.

“Accessory item,” as used in this subpart, means an item that facilitates or enhances the operation of plant equipment but which is not essential for its operation.

“Agency-peculiar property” (see 45.301).

“Auxiliary item,” as used in this subpart, means an item without which the basic unit of plant equipment cannot operate.

“Contractor-acquired property” (see 45.101).

“Custodial records,” as used in this subpart, means written memoranda of any kind, such as requisitions, issue hand receipts, tool checks, and stock record books, used to control items issued from tool cribs, tool rooms, and stockrooms.

“Discrepancies incident to shipment,” as used in this subpart, means all deficiencies incident to shipment of Government property to or from a contractor’s facility whereby differences exist between the property purported to have been shipped and property actually received. Such deficiencies include loss, damage, destruction, improper status and condition coding, errors in identity or classification, and improper consignment.

“Facilities” (see 45.301).

“Government-furnished property” (see 45.101).

“Government property” (see 45.101).

“Individual item record,” as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for one item of property.

“Material” (see 45.301).

“Nonprofit organization” (see 45.301).

“Plant equipment” (see 45.101).

“Property administrator,” as used in this subpart, means an authorized representative of contracting officer assigned to administer the contract requirements and obligations relating to Government property.

“Real property” (see 45.101).

“Salvage,” as used in this subpart, means property that, because of its worn, damaged, deteriorated, or incomplete condition or specialized nature, has no reasonable prospect of

sale or use as serviceable property without major repairs, but has some value in excess of its scrap value.

“Scrap,” as used in this subpart, means personal property that has no value except for its basic material content.

“Special test equipment” (see 45.101).

“Special tooling” (see 45.101).

“Stock record,” as used in this subpart, means a perpetual inventory record which shows by nomenclature the quantities of each item received and issued and the balance on hand.

“Summary record,” as used in this subpart, means a separate card, form, document or specific line(s) of computer data used to account for multiple quantities of a line item of special tooling, special test equipment, or plant equipment costing less than \$5,000 per unit.

“Utility distribution system,” as used in this subpart, includes distribution and transmission lines, substations, or installed equipment forming an integral part of the system by which gas, water, steam, electricity, sewerage, or other utility services are transmitted between the outside building or structure in which the services are used and the point of origin, disposal, or connection with some other system. It does not include communication services.

“Work-in-process,” as used in this subpart, means material that has been released to manufacturing, engineering, design or other services under the contract and includes undelivered manufactured parts, assemblies, and products, either complete or incomplete.

45.502 Contractor responsibility.

(a) The contractor is directly responsible and accountable for all Government property in accordance with the requirements of the contract. This includes Government property in the possession or control of a subcontractor. The contractor shall establish and maintain a system in accordance with this subpart to control, protect, preserve, and maintain all Government property. This property control system shall be in writing unless the property administrator determines that maintaining a written system is unnecessary. The system shall be reviewed and, if satisfactory, approved in writing by the property administrator.

(b) The contractor shall maintain and make available the records required by this subpart and account for all Government property until relieved of that responsibility. The contractor shall furnish all necessary data to substantiate any request for relief from responsibility.

(c)(1) The contractor shall be responsible for the control of Government property under this Subpart 45.5 upon—

(i) Delivery of Government-furnished property into its custody or control;

(ii) Delivery, when property is purchased by the contractor and the contract calls for reimbursement by the Government (this requirement does not alter or modify contractual requirements relating to passage of title);

(iii) Approval of its claim for reimbursement by the Government or upon issuance for use in contract performance, whichever is earlier, of property withdrawn from contractor-owned stores and charged directly to the contract; or

(iv) Acceptance of title by the Government when title is acquired pursuant to specific contract clauses or as a result of change orders or contract termination.

(2) Property to which the Government has acquired a lien or title solely as a result of advance, progress, or partial payments is not subject to the requirements of this subpart.

(d) The contractor shall require subcontractors provided Government property under the prime contract to comply with the requirements of this subpart. Procedures for assuring subcontractor compliance shall be included in the contractor's property control system. Where the property administrator assigned to the contract has requested supporting property administration from another contract administration office, the contractor may accept the system approval of the supporting property administrator instead of performing duplicative actions to assure the subcontractor's compliance.

(e) If the property administrator finds any portion of the contractor's property control system to be inadequate, the contractor must take any necessary corrective action before the system can be approved. If the contractor and property administrator cannot agree regarding the adequacy of control and corrective action, the matter shall be referred to the contracting officer.

(f) When Government property (excluding misdirected shipments, see 45.505-12) is disclosed to be in the possession or control of the contractor but not provided under any contract, the contractor shall promptly—

(1) Record such property according to the established property control procedure; and

(2) Furnish to the property administrator all known circumstances and data pertaining to its receipt and a statement as to whether there is a need for its retention.

(g) The contractor shall promptly report all Government property in excess of the amounts needed to complete full performance under the contracts providing it or authorizing its use.

(h) When unrecorded Government property is found, both the cause of the discrepancy and actions taken or needed to prevent recurrence shall be determined and reported to the property administrator.

45.502-1 Receipts for Government property.

The contractor shall furnish written receipts for all or specified classes of Government property only when the property administrator deems it essential for maintaining minimum acceptable property controls. If evidence of receipt is required for contractor-acquired property, the contractor shall provide it before submitting its request for payment for the property. For Government-furnished property, the contractor shall pro-

vide the required receipt immediately upon receipt of the property.

45.502-2 Discrepancies incident to shipment.

(a) *Government-furnished property.* If overages, shortages, or damages are discovered upon receipt of Government-furnished property, the contractor shall provide a statement of the condition and apparent causes to the property administrator and to other activities specified in the approved property control system. Only that quantity of property actually received will be recorded on the official records.

(b) *Contractor-acquired property.* The contractor shall take all actions necessary in adjusting overages, shortages, or damages in shipment of contractor-acquired property from a vendor or supplier. However, when the shipment has moved by Government bill of lading and carrier liability is indicated, the contractor shall report the discrepancy in accordance with paragraph (a) of this subsection.

45.503 Relief from responsibility.

(a) Unless the contract or contracting officer provides otherwise, the contractor shall be relieved of property control responsibility for Government property by—

(1) Reasonable and proper consumption of property in the performance of the contract as determined by the property administrator;

(2) Retention by the contractor, with the approval of the contracting officer, of property for which the Government has received consideration;

(3) The authorized sale of property, provided the proceeds are received by or credited to the Government;

(4) Shipment from the contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the contractor; or

(5) A determination by the contracting officer of the contractor's liability for any property that is lost, damaged, destroyed, or consumed in excess of that normally anticipated in a manufacturing or processing operation, if—

(i) The determination is furnished to the contractor in writing;

(ii) The Government is reimbursed where required by the determination; and

(iii) Property rendered unserviceable by damage is properly disposed of, and the determination is cross-referenced to the shipping or other documents evidencing disposal.

(b) Nonprofit organizations are relieved of responsibility for Government property when title to the property is transferred to the contractor (see 35.014).

45.504 Contractor's liability.

(a) Subject to the terms of the contract and the circumstances surrounding the particular case, the contractor may be

liable for shortages, loss, damages, or destruction of Government property. The contractor may also be liable when the use or consumption of Government property unreasonably exceeds the allowances provided for by the contract, the bill of material, or other appropriate criteria.

(b) The contractor shall investigate and report to the property administrator all cases of loss, damage, or destruction of Government property in its possession or control as soon as the facts become known or when requested by the property administrator. A report shall be furnished when completed and accepted products or end items are lost, damaged, or destroyed while in the contractor's possession or control.

(c) The contractor shall require any of its subcontractors possessing or controlling Government property accountable under the contract to investigate and report all instances of loss, damage, or destruction of such property.

45.505 Records and reports of Government property.

(a) The contractor's property control records shall constitute the Government's official property records unless an exception has been authorized. The contractor shall establish and maintain adequate control records for all Government property, including property provided to and in the possession or control of a subcontractor. The property control records specified in this section are the minimum required by the Government. Unless the property administrator directs otherwise, when a subcontractor has an approved property control system for Government property provided under its own prime contracts, the contractor shall use the records created and maintained under that system.

(b) The contractor's property control system shall provide financial accounts for Government-owned property in the contractor's possession or control. The system shall be subject to internal control standards and be supported by property records for such property.

(c) Official Government property records must identify all Government property and provide a complete, current, auditable record of all transactions. The contractor's system of records maintenance shall be sufficient to adequately control Government property as required by this section. The contractor's system of records maintenance, as a minimum, shall be equivalent to and maintained in the same manner as the contractor's system for maintaining records of contractor-owned property, but need not exceed the requirements of this subpart. The records shall be safeguarded from tampering or destruction. Records shall be accessible to authorized Government personnel.

(d) Separate property records for each contract are desirable, but a consolidated property record may be maintained if it provides the required information.

(e) Special tooling and special test equipment fabricated from materials that are the property of the Government shall be recorded as Government-owned immediately upon fabri-

cation. Special tooling and special test equipment fabricated from materials that are the property of the contractor shall be recorded as Government property at the time title passes to the Government.

(f) Property records of the type established for components acquired separately shall be used for serviceable components permanently removed from items of Government property as a result of modification.

(g) The contractor's property control system shall contain a system or technique to locate any item of Government property within a reasonable period of time.

45.505-1 Basic information.

(a) Unless summary records are used as authorized under paragraph (b) of this section, the contractor's property control records shall provide the following basic information for every item of Government property in the contractor's possession, regardless of value (other subsections of 45.505 require additional information for specific categories of Government property):

(1) The name, description, and National Stock Number (if furnished by the Government or available in the property control system).

(2) Quantity received (or fabricated), issued, and on hand.

(3) Unit price (and unit of measure).

(4) Contract number or equivalent code designation.

(5) Location.

(6) Disposition.

(7) Posting reference and date of transaction.

(b) Summary records are normally adequate for special tooling, special test equipment, and plant equipment costing less than \$5,000 per unit, except where the contract administration office determines that individual item records are necessary for effective control, calibration, or maintenance. Summary records shall provide the information listed in paragraphs (a)(1) through (a)(7) of this section, but may reference a general location, provided the contractor can locate the property within a reasonable period of time.

45.505-2 Records of pricing information.

(a) *Requirement for unit prices.* (1) The contractor's property control system shall contain the unit price for each item of Government property except as provided in (b) of this section. When a contractor records the unit price of property on other than the quantitative inventory records, those supplementary records shall become part of the official Government property records.

(2) (NOTE: *This paragraph (a)(2) does not apply to nonprofit organizations.*) The requirement that unit prices be contained in the official Government property records does not apply to those separate property records located at a contractor's secondary sites and subcontractor plants; provided, that—

(i) Records maintained by the prime contractor at its primary site include unit prices; and

(ii) The prime contractor agrees to furnish actual or estimated unit prices to the secondary site or subcontractor as the need arises.

(3) When definite information as to unit price cannot be obtained, reasonable estimates will be used.

(b) *Determining unit price*—(1) *Contractor-acquired and contractor-fabricated property*. Except for items fabricated by nonprofit organizations for research and development purposes, the unit price of contractor-acquired and contractor-fabricated property shall be determined in accordance with the system established by the contractor in conformance with consistently applied sound accounting principles. Generally, separate unit prices should be applied to items of special tooling and special test equipment fabricated or acquired by the contractor. However, if the contractor's accounting system is acceptable, and if maintaining detailed cost records results in excessive accounting cost or is otherwise impracticable, group pricing may be used for special tooling, special test equipment, and work-in-process in accordance with the contractor's acceptable cost accounting system. All processed material, fabricated parts, components, and assemblies charged to the contractor's work-in-process inventory, including items in temporary storage while awaiting processing, may be considered as work-in-process for this purpose.

(2) *Government-furnished property*. The Government shall determine and furnish to the contractor the unit price of Government-furnished property. Transportation and installation costs shall not generally be considered as part of the unit price for this purpose. Normally, the unit price of Government-furnished property will be provided on the document covering shipment of the property to the contractor. In the event the unit price is not provided on the document, the contractor will take action to obtain the information.

45.505-3 Records of material.

(a) *General*. All Government material furnished to the contractor, as well as other material to which title has passed to the Government by reason of allocation from contractor-owned stores or purchase by the contractor for direct charge to a Government contract or otherwise, shall be recorded in accordance with the contractor's property control system and the requirements of this section.

(b) *Consolidated stock record*. When a contractor has more than one Government contract under which Government material is provided, a consolidated record for materials may be authorized by the property administrator, provided, the total quantity of any item is allocated to each contract by contract number and each requisition of material from contractor-owned stores is charged to the contract on which the material is to be used. The supporting document or issue slip

shall show the contract number or equivalent code designation to which the issue is charged.

(c) *Custodial records*. The contractor shall maintain custodial records for tool crib items, guard force items, protective clothing, and other items issued to individuals for use in their work.

(d) *Use of receipt and issue documents*. (**Note:** *This paragraph (d) does not apply to nonprofit organizations.*) The property administrator may authorize the contractor to maintain, in lieu of stock records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of Government-provided material that is issued for immediate consumption and is not entered in the inventory record as a matter of sound business practice. This method of control may be authorized for—

- (1) Material charged through overhead;
- (2) Material under research and development contracts;
- (3) Subcontracted or outside production items;
- (4) Nonstock or special items;
- (5) Items that are produced for direct charge to a contract, or are acquired and issued for installation upon receipt, and involve no spoilage; and
- (6) Items issued from contractor-owned inventory direct to production or maintenance, etc.

(e) *Material issued directly upon receipt*. (**NOTE:** *This paragraph (e) applies only to nonprofit organizations.*)

(1) Under fixed-price contracts, the contractor's documents evidencing receipt and issue will be accepted as property control records for Government-furnished material issued directly by the contractor upon receipt so as to be considered consumed under the contract.

(2) Under cost-reimbursement contracts, Government invoices, contractor's purchase documents, or other evidence of acquisition and issue will be accepted as adequate property records for material furnished to or acquired by the contractor and issued directly so as to be considered consumed under the contract.

(f) *Multicontract cost and material control*. (**NOTE:** *This paragraph (f) does not apply to nonprofit organizations.*)

(1) *Description and scope*. A multicontract cost and material control system substitutes a system of financial accounting for the requirements for physical identification of Government material. The system operates as follows:

(i) The contractor may acquire, requisition, receive, store, and issue like items of material for the total requirements of all contracts involved in the system without identifying the material to each contract.

(ii) The contractor may commingle, during any stage of contract performance, Government-owned and contractor-owned material and work-in-process that was furnished, acquired, or produced for all Government contracts covered by the system, without physical segregation or identification to the individual contracts.

(iii) In lieu of physical segregation and identification to individual contracts, periodic calculation of requirements and distribution of costs to all contracts permits the allocation of costs of material to products delivered. This system, by reflecting the material expended to perform each contract at any stage in production, permits usage analysis to determine the reasonableness of consumption and expenditure of Government material.

(iv) The system may include all Government contracts of any type that involve common repetitive operations.

(v) The system does not require commingling of all common materials under all contracts. For example, items of Government-furnished material of high value or in short supply may be excluded from commingling and reserved for use in performing the contract under which furnished.

(vi) The contractor shall take physical inventories of material in stores included in the systems (other than work-in-process) at least annually, extend and reconcile prices to the quantitative balance for each item, and record adjustments in the stock record and financial inventory control accounts. Such physical inventories and adjustments, as well as equitable distribution to cost accounts of any inventory losses, shall be reviewed by and are subject to the approval of the property administrator.

(2) *Criteria.* A multicontract cost and material control system may be authorized if—

(i) The contractor demonstrates that adopting the system will result in savings or improved operations or that it will otherwise be in the Government's interest;

(ii) The system is applied to existing Government contracts only and excludes materials acquired or costs incurred for non-Government work or in anticipation of future Government work; and

(iii) The contractor's accounting system is adequate to—

(A) Provide on a complete and timely basis a clear "audit trail" from costs of materials acquired for each contract to materials used or disposed of on each contract;

(B) Reflect separately for Government-furnished and contractor-acquired material in stores (except work-in-process) the inventory balances as affected by receipts, issues, adjustments, and other dispositions;

(C) Determine unit costs for each identifiable part, component, subassembly, assembly, end item, and contract item;

(D) Calculate amounts for cost reimbursements and progress payments during the life of the contract by applying or allocating such unit costs developed through each stage of work-in-process to contract items for the requirements of each contract; and

(E) Assure that when Government material furnished for use under one contract is authorized for use on another contract, the initial contract receives credit.

(3) *Authorization.* The administrative contracting officer may authorize a contractor who is performing or will perform more than one Government contract to use the multicontract cost and material control system. The property administrator shall approve whatever detailed operating procedures are necessary for each system authorized.

(4) *Requirement.* Whenever a multicontract cost and material control system is authorized, the contractor's financial accounts shall include all material in the system acquired or furnished for Government work and shall satisfy the requirements in subdivision (f)(2)(iii) of 45.505-3 of this section.

45.505-4 Records of special tooling and special test equipment.

(NOTE: The special tooling requirements of this subsection 45.505-4 do not apply to nonprofit organizations except for paragraph (c).)

(a) Unless summary records are used as authorized under 45.505-1(b), the contractor's property control system shall provide the basic information listed in 45.505-1(a) regarding each item of Government-owned special tooling and special test equipment, including any general purpose test equipment incorporated as components in such a manner that removal and reuse may be feasible and economical.

(b) If the contractor uses group pricing of special tooling or special test equipment, as recognized in 45.505-2(b), unit prices may be computed when required.

(c) In the case of special tooling acquired or fabricated by nonprofit organizations or furnished by the Government to nonprofit organizations for research and development, the Government invoices, contractor's purchase document, or other documents that evidence acquisition or issue will be accepted as adequate property control records.

(d) Records identifying special tooling and special test equipment shall include the identification number and item on which used.

(e) The contractor shall, when specified by the contract, identify and report special tooling and special test equipment by retention category (*e.g.*, assembly tooling or critical tooling for spares or replacements).

45.505-5 Records of plant equipment.

(a) Unless summary records are used as authorized under 45.505-1(b), the contractor shall maintain individual item records for each item of plant equipment.

(b) In addition to the information required in 45.505-1, the contractor's records of Government-owned plant equipment, regardless of value, shall include—

(1) Federal Supply Code for the manufacturer (as listed in Cataloging Handbook H4-1 and H4-2) available from the:

Superintendent of Documents
Government Printing Office (GPO)
Washington DC 20402

(2) Federal Supply Classification (Cataloging Handbooks H2-1, H2-2, and H2-3) (available from GPO); and

(3) The original manufacturer's model or part number.

(c) For each item of Government-owned plant equipment having a unit cost of \$5,000 or more, the contractor shall, in addition to the requirements of (b) of this section, include—

(1) Serial number and year built (when available);

(2) Government identification/tag number; and

(3) Acquisition and disposition document references and dates.

(d) The property administrator may determine that the information in (c)(1) and (2) of this subsection should be recorded in the property records for plant equipment costing less than \$5,000.

(e) Accessory and auxiliary equipment shall be recorded on the record of the associated item of plant equipment. If the accessory or auxiliary item is not attached to, a part of, or acquired for use with a specific item of plant equipment, it shall be recorded either in an individual item record or in a summary stock record. When accessory and auxiliary items are permanently separated from the basic item of plant equipment, the unit price of the basic item shall be appropriately reduced.

45.505-6 Special reports of plant equipment.

An agency may set requirements for any special reports of plant equipment it determines necessary.

45.505-7 Records of real property.

(a) The contractor shall maintain an itemized record of the description, location, acquisition cost, and disposition of all Government real property (including unimproved real property); all alterations, all construction work, and sites connected with such alteration and construction, acquired by purchase, lease, or otherwise. These records, including maps, drawings, plans, specifications, and supplementary data where necessary, shall—

(1) Be complete;

(2) Show the original cost of the property and improvements and the cost of any changes and additions; and

(3) Be appropriately indexed.

(b) Costs incurred by the contractor or the Government for new construction, including erection, installation, or assembly of Government real property in possession of the contractor, shall be capitalized in the official Government real property records and financial accounts maintained by the contractor for the Government.

(c) Costs incurred for additions, expansions, extensions, conversions, alterations, and improvements, including applicable portions of capital maintenance, that increase the value,

life, utility, capability, or serviceability of Government real property shall be capitalized.

(d) Costs incurred for portable buildings or facilities specifically constructed for tests that involve destruction of the facility shall not be capitalized in the Government real property records or financial accounts.

(e) Costs incurred for maintenance, repair, or rearrangement to maintain the Government real property in good physical condition, utility, capacity, or serviceability shall be charged to expense, and the real property records shall not be affected.

(f) When Government-owned real property is sold, transferred, donated, destroyed by fire or other cause, abandoned-in-place, or condemned, the financial accounts shall be reduced by the presently recorded cost and the real property records annotated with a supporting statement, including pertinent facts.

45.505-8 Records of scrap or salvage.

(a) The contractor shall maintain records of all scrap or salvage generated, except as provided in 45.507. These records shall conform to the contractor's established system of scrap and salvage control approved by the property administrator.

(b) The contractor's property control system shall provide the following information:

(1) Contract number, if practical, or equivalent code designation from which the scrap or salvage derived.

(2) Nomenclature or description of salvable items or classification (material content) of scrap.

(3) Quantity on hand.

(4) Posting reference and date of transaction.

(5) Disposition.

45.505-9 Records of related data and information.

The contractor shall maintain property control and accountability, in accordance with sound business practice, of manufacturing or assembly drawings; installation, operation, repair, or maintenance instructions; and other similar information furnished to the contractor by the Government or generated or acquired by the contractor under the contract and for which title vests in the Government. The requirements of this subpart do not otherwise apply to such property.

45.505-10 Records of completed products.

The contractor shall maintain a record of all completed products produced under a contract as follows:

(a) When there is no time lapse between Government inspection and acceptance of the completed products and shipment from the plant site, the records shall, as a minimum, consist of a summary of quantities accepted and shipped. When end items are accepted by the Government and stored with the contractor awaiting shipment, the record shall identify quantities stored, location, and disposition action.

(b) On contracts that provide for the contractor to retain completed products for further use under the contract or other contracts, such items shall be considered “Government-furnished property” upon acceptance and shall be recorded as required by this subpart.

(c) When completed products are returned to a contractor under the terms of a warranty clause, the contractor shall maintain, by contract, a record containing a description of the items involved, quantities received and returned to the Government, and other pertinent data necessary to determine that a proper accounting for all property has been made.

45.505-11 Records of transportation and installation costs of plant equipment.

(NOTE: This subsection 45.505-11 does not apply to nonprofit organizations.)

(a) *Transportation costs.* (1) The contractor shall record within the property control system the transportation and installation costs directly borne by the Government for each item of Government-owned plant equipment with an acquisition cost of \$5,000 or more. The administrative contracting officer may require the contractor to provide such recorded costs for use in computing rental charges.

(2) If transportation costs are not included in the price of equipment delivered, the contractor shall contact the property administrator for instructions for obtaining applicable freight data.

(b) *Installation costs.* (1) When the contractor performs installation, the cost shall be computed in accordance with the contractor’s accounting system (if the system is acceptable for other contract cost determination purposes) and recorded in the property record.

(2) When installation is subcontracted, the contractor shall record the cost paid to the subcontractor in the property record.

(3) When installation costs are included in the price of equipment delivered to the using location, the property records should be so annotated.

45.505-12 Records of misdirected shipments.

The contractor’s property control system shall provide the following information regarding each misdirected shipment of Government property received:

(a) Identity of shipment, such as shipping document or bill of lading.

(b) Origin of shipment.

(c) Content (items in the shipment) per shipping documents, if available.

(d) Location.

(e) Disposition.

45.505-13 Records of property returned for rework.

(a) The contractor shall maintain quantitative records of property returned for processing to assure control from time of receipt through return of the items to the Government. The contractor shall establish item records under its property control system and shall include the information required in 45.505-1.

(b) The records shall specify the quantity of units returned to the Government and the quantity otherwise disposed of with proper authority.

45.505-14 Reports of Government property.

(a) The contractor’s property control system shall provide annually the total acquisition cost of Government property for which the contractor is accountable under each contract with each agency, including Government property at subcontractor plants and alternate locations. The following classifications (property classifications may be varied to meet individual agency needs) shall be reported:

(1) Land and rights therein.

(2) Other real property, including utility distribution systems, buildings, structures, and improvements thereto.

(3) Plant equipment.

(4) Special tooling.

(5) Special test equipment.

(6) Material.

(7) Agency peculiar property.

(b) The contractor shall report the information under paragraph (a) as directed by the contracting officer.

45.506 Identification.

(a) Upon receipt of Government property, the contractor shall promptly—

(1) Identify the property in accordance with agency regulations;

(2) Mark the property in accordance with this section; and

(3) Record the property in its property control records.

(b)(1) Except for the following, all Government property shall be marked with an indication of Government-ownership:

(i) Items issued to individuals for use in their work (*e.g.*, protective clothing or tool crib tools) where adequate physical control is maintained over the items.

(ii) Property of a bulk type, or where its general nature of packing or handling precludes adequate marking.

(iii) Material that is commingled, as authorized by 45.507.

(iv) Where the property administrator agrees that marking is impractical.

(2) Exempted items shall be entered and described on the accountable property records.

(c)(1) In addition to marking with an indication of Government ownership, the following property shall be marked with a serial number in accordance with procedures approved by the property administrator:

(i) Special tooling.

(ii) Special test equipment.

(iii) Components of special test equipment that have an acquisition cost of \$5,000 or more and are incorporated in a manner that makes removal and reutilization feasible and economical.

(iv) Plant equipment.

(v) Accessory or auxiliary equipment associated with a specific item of plant equipment that is recorded on the property records, if necessary to assure return with the associated basic item.

(2) The contractor shall record assigned numbers on all applicable documents pertaining to the property control system.

(3) If the property is included in a standard agency registration system, the contractor may use the property's registration number as the serial number. The contractor should obtain the registration number through the property administrator from the owning agency.

(d) The markings in paragraphs (b) and (c) of this section shall be (1) securely affixed to the property, (2) legible, and (3) conspicuous. Examples of appropriate markings are bar coding, decals, and stamping. If marking will damage the property or is otherwise impractical, the contractor shall promptly notify the property administrator and ask for the item to be exempted (see paragraph (b) of this section). Markings shall be removed or obliterated when Government property is sold, scrapped, or donated.

45.507 Segregation of Government property.

Government property shall be kept physically separate from contractor-owned property. However, when advantageous to the Government and consistent with the contractor's authority to use such property, the property may be commingled—

(a) When the Government property is special tooling, special test equipment, or plant equipment clearly identified and recorded as Government property;

(b) When approved by the property administrator in connection with research and development contracts;

(c) When material is included in a multicontract cost and material control system (however, see 45.505-3(f));

(d) When—

(1) Scrap of a uniform nature is produced from both Government-owned and contractor-owned material and physical segregation is impracticable,

(2) Scrap produced from Government-owned material is insignificant in consideration of the cost of segregation and control, or

(3) Government contracts involved are fixed-price and provide for the retention of the scrap by the contractor; or

(e) When otherwise approved by the property administrator.

45.508 Physical inventories.

The contractor shall periodically physically inventory all Government property (except materials issued from stock for manufacturing, research, design, or other services required by the contract) in its possession or control and shall cause subcontractors to do likewise. The contractor, with the approval of the property administrator, shall establish the type, frequency, and procedures. These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records. Type and frequency of inventory should be based on the contractor's established practices, the type and use of the Government property involved, or the amount of Government property involved and its monetary value, and the reliability of the contractor's property control system. Type and frequency of physical inventories normally will not vary between contracts being performed by the contractor, but may vary with the types of property being controlled. Personnel who perform the physical inventory shall not be the same individuals who maintain the property records or have custody of the property unless the contractor's operation is too small to do otherwise.

45.508-1 Inventories upon termination or completion.

(a) *General.* Immediately upon termination or completion of a contract, the contractor shall perform and cause each subcontractor to perform a physical inventory, adequate for disposal purposes, of all Government property applicable to the contract, unless the requirement is waived as provided in paragraph (b) of this section.

(b) *Exception.* The requirement for physical inventory at the completion of a contract may be waived by the property administrator when the property is authorized for use on a follow-on contract; provided, that—

(1) Experience has established the adequacy of property controls and an acceptable degree of inventory discrepancies; and

(2) The contractor provides a statement indicating that record balances have been transferred in lieu of preparing a formal inventory list and that the contractor accepts responsibility and accountability for those balances under the terms of the follow-on contract.

(c) *Listings for disposal purposes.* (**Note:** *This paragraph (c) applies only to nonprofit organizations.*)

(1) Standard items that have been modified may be described on listings for disposal purposes as standard items with a general description of the modification.

(2) Items that have been fabricated, such as test equipment, shall be described in sufficient detail to permit a potential user to determine whether they are of sufficient interest to warrant further inspection.

45.508-2 Reporting results of inventories.

The contractor shall, as a minimum, submit the following to the property administrator promptly after completing the physical inventory:

(a) A listing that identifies all discrepancies disclosed by a physical inventory.

(b) A signed statement that physical inventory of all or certain classes of Government property was completed on a given date and that the official property records were found to be in agreement except for discrepancies reported.

45.508-3 Quantitative and monetary control.

When requested by the contracting officer, the contractor's reports of results of physical inventory shall be prepared on a quantitative and monetary basis and segregated by categories of property.

45.509 Care, maintenance, and use.

The contractor shall be responsible for the proper care, maintenance, and use of Government property in its possession or control from the time of receipt until properly relieved of responsibility, in accordance with sound industrial practice and the terms of the contract. The removal of Government property to storage, or its contemplated transfer, does not relieve the contractor of these responsibilities.

45.509-1 Contractor's maintenance program.

(a) Consistent with the terms of the contract, the contractor's maintenance program shall provide for—

(1) Disclosure of need for and the performance of preventive maintenance;

(2) Disclosure and reporting of need for capital rehabilitation; and

(3) Recording of work accomplished under the program.

(b) Preventive maintenance is maintenance performed on a regularly scheduled basis to prevent the occurrence of defects and to detect and correct minor defects before they result in serious consequences. An effective preventive maintenance program shall include at least—

(1) Inspection of buildings at periodic intervals to assure detection of deterioration and the need for repairs;

(2) Inspection of plant equipment at periodic intervals to assure detection of maladjustment, wear, or impending breakdown;

(3) Regular lubrication of bearings and moving parts in accordance with a lubrication plan;

(4) Adjustments for wear, repair, or replacement of worn or damaged parts and the elimination of causes of deterioration;

(5) Removal of sludge, chips, and cutting oils from equipment that will not be used for a period of time;

(6) Taking necessary precautions to prevent deterioration caused by contamination, corrosion, and other substances; and

(7) Proper storage and preservation of accessories and special tools furnished with an item of plant equipment but not regularly used with it.

(c) The contractor's maintenance program shall provide for disclosing and reporting the need for major repair, replacement, and other capital rehabilitation work for Government property in its possession or control.

(d) The contractor shall keep records of maintenance actions performed and any deficiencies in the Government property discovered as a result of inspections.

45.509-2 Use of Government property.

(a) The contractor's procedures shall be in writing and adequate—

(1) To assure that Government property will be used only for those purposes authorized in the contract and that any required approvals will be obtained, and

(2) To provide a basis for determining and allocating rental charges.

(b) With respect to plant equipment with an acquisition value of \$5,000 or more, the procedures, as a minimum, shall—

(1) Establish a minimum level of use below which an analysis of need shall be made and retention justified, except for inactive plants and equipment retained for mobilization (the use level may be established for individual items or families of items, depending upon circumstances of use);

(2) Provide for recording authorized and actual use consistent with the established use levels;

(3) Require periodic analyses of production needs for plant equipment utilization based upon known requirements; and

(4) Provide for prompt reporting to the contracting officer of all plant equipment for which retention is not justified.

45.510 Property in possession of subcontractors.

The contractor shall require any of its subcontractors possessing or controlling Government property to adequately care for and maintain that property and assure that it is used only as authorized by the contract. The contractor's approved property control system shall include procedures necessary for accomplishing this responsibility.

45.511 Audit of property control system.

The Government may audit the contractor's property control system as frequently as conditions warrant. These audits may take place at any time during contract performance, upon

contract completion or termination, or at any time thereafter during the period the contractor is required to retain such records. The contractor shall make all such records and related correspondence available to the auditors.

Subpart 45.6—Reporting, Redistribution, and Disposal of Contractor Inventory

45.600 Scope of subpart.

This subpart establishes policies and procedures for the reporting, redistribution, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (*e.g.*, termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

“Common item,” as used in this subpart, means material that is common to the applicable Government contract and the contractor’s other work.

“Contractor-acquired property” (see 45.101).

“Contractor inventory,” as used in this subpart, means—

(a) Any property acquired by and in the possession of a contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;

(b) Any property that the Government is obligated or has the option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and

(c) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

“Government-furnished property” (see 45.101).

“Government property” (see 45.101).

“Line item,” as used in this subpart, means a single line entry on a reporting form that indicates a quantity of property having the same description and condition code from any one contract at any one reporting location.

“Personal property,” as used in this subpart, means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

“Plant clearance,” as used in this subpart, means all actions relating to the screening, redistribution, and disposal of contractor inventory from a contractor’s plant or work site. The term “contractor’s plant” includes a contractor-operated Government facility.

“Plant clearance officer,” as used in this subpart, means an authorized representative of the contracting officer assigned responsibility for plant clearance.

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

“Plant equipment” (see 45.101).

“Precious metals,” as used in this subpart, means uncommon and highly valuable metals characterized by their superior resistance to corrosion and oxidation. Included are silver, gold, and the platinum group metals—platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Property administrator” (see 45.501).

“Public body” means any State, Territory, or possession of the United States, any political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, any agency or instrumentality of any of the foregoing, any Indian tribe, or any agency of the Federal Government.

“Real property” (see 45.101).

“Reportable property,” as used in this subpart, means contractor inventory that must be reported for screening in accordance with this subpart before disposition as surplus.

“Reporting activity,” as used in this subpart, means the Government activity that initiates the Standard Form 120, Report of Excess Personal Property (or when acceptable to GSA, by data processing output).

“Salvage” (see 45.501).

“Scrap” (see 45.501).

“Screening completion date,” as used in this subpart, means the date on which all screening required by this subpart is to be completed. It includes screening within the Government and the donation screening period.

“Serviceable or usable property,” as used in this subpart, means property that has a reasonable prospect of use or sale either in its existing form or after minor repairs or alterations.

“Special test equipment” (see 45.101).

“Special tooling” (see 45.101).

“Surplus property,” as used in this subpart, means contractor inventory not required by any Federal agency.

“Surplus Release Date (SRD),” as used in this subpart, means the date on which screening of personal property for Federal use is completed and the property is not needed for any Federal use. On that date, property becomes surplus and is eligible for donation.

“Termination inventory,” as used in this subpart, means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate

contract or to a special contract requirement governing their use or disposition.

“Work-in-process” (see 45.501).

45.602 [Reserved]

45.603 Disposal methods.

MMS may exercise its rights to require delivery of any contractor inventory. This includes transfers of Government property to another Government contract. If MMS does not exercise these rights, the contractor inventory shall be disposed of by one of the following methods in the priority indicated:

- (a) Purchase or retention at cost by prime contractor or subcontractor of contractor-acquired property (see 45.605-1).
- (b) Return of contractor-acquired property to suppliers (see 45.605-2).
- (c) Use within the Government through the use of prescribed screening procedures (see 45.608).
- (d) Donation to eligible donees (see 45.609).
- (e) Sale (including purchase or retention at less than cost by the prime contractor or subcontractor) (see 45.610).
- (f) Donation to public bodies in lieu of abandonment (see 45.611).
- (g) Abandonment or destruction (see 45.611).

45.604 Restrictions on purchase or retention of contractor inventory.

A contractor's or subcontractor's authority to purchase, retain, or dispose of contractor inventory is subject to any contract provisions and to applicable Government restrictions on the disposition of property that is classified for security reasons, possesses military offensive or defensive characteristics, or is dangerous to public health, safety, or welfare.

45.605 Contractor-acquired property.

45.605-1 Purchase or retention at cost.

(a) The plant clearance officer shall encourage contractors to purchase or retain contractor-acquired property at cost. However, the contractor shall not include any part of the cost of property purchased or retained in any claim for reimbursement against the Government. Under cost-reimbursement contracts, appropriate adjustments shall be made for previously reimbursed costs. When the property is for use on a continuing Government contract or commercial operation, handling and transportation charges may be considered an allowable cost (included in the contractor's settlement proposal as “other costs” in the case of a termination), provided that the charges are reasonable.

(b) If a contractor purchases or retains contractor inventory for use on a continuing Government contract that is subsequently terminated, the property shall be allocated to the con-

tinuing contract, even though its purchase would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on other Government contracts, the contractor terminates subcontracts under the other Government contracts, reasonable termination charges of the subcontracts may be included as an allocable cost under the contract that generated the excess property.

45.605-2 Return to suppliers.

The plant clearance officer shall encourage contractors to return allocable quantities of contractor-acquired property to suppliers for full credit less either the supplier's normal restocking charge or 25 percent of the cost, whichever is less. Contractors may be reimbursed for reasonable transportation, handling, and restocking charges, but not for the cost of the returned property. Under cost-reimbursement contracts, appropriate adjustments shall be made for costs previously reimbursed. A contractor's property control system shall include procedures to ensure property is returned to the supplier for appropriate credit whenever feasible.

45.605-3 Cost-reimbursement contracts.

Under cost-reimbursement contracts, property purchased or retained by the contractor or returned to suppliers shall not be reported on inventory schedules. The cognizant contract administration office, in coordination with the cognizant auditor, shall periodically review such transactions to protect the Government's interests.

45.606 Inventory schedules.

45.606-1 Submission.

When property is no longer needed to perform the contract, the contractor shall prepare inventory schedules in accordance with the contract and instructions from the plant clearance officer and shall promptly submit the schedules to the cognizant contract administration office. Detailed instructions and requirements governing preparing and submitting inventory schedules are contained in 45.606-5. Agencies may use special inventory schedules for intra-agency screening of particular categories of contractor inventory (*e.g.*, plant equipment of \$5,000 or more). Such schedules may also be used for screening with other Federal agencies after coordination with GSA.

45.606-2 Common items.

The contractor's inventory schedules shall not include any items that the contractor can reasonably use on other work without financial loss. However, the schedules shall include common items specified by the contracting officer for delivery to the Government or which are Government-furnished property.

45.606-3 Acceptance.

(a) Within 15 days after receipt of inventory schedules, the plant clearance officer shall review them, determine their acceptability, and request the contractor to correct any inadequate listings. Inventory schedules should not be rejected if the information is adequate for disposal purposes, even if complete cost data on work-in-process are not available. Rejection shall be limited, when possible, to specific items and shall not necessarily render the entire schedule unacceptable. If substantial errors are discovered that were not apparent on termination inventory schedules previously found acceptable, the final phase of a plant clearance period shall not begin until corrected schedules have been submitted, unless the plant clearance officer determines otherwise.

(b) The plant clearance officer, with the assistance of other Government personnel as necessary, shall verify that (1) the inventory is present at the location indicated, (2) the inventory is allocable to the contract, (3) the quantity and condition are correctly stated, and (4) the contractor has endeavored to divert items to other work. The verification may be recorded on SF 1423, Inventory Verification Survey. The plant clearance officer shall require the contractor to promptly correct any discrepancies on the inventory schedule or resubmit the schedule as necessary.

45.606-4 Withdrawals.

If, before final disposition, the contractor becomes aware that any items of contractor-acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity.

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(a) *Use of forms.* The contractor shall report contractor inventory on the following forms, as appropriate.

(1) *Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form) and SF 1427, Inventory Schedule A—Continuation Sheet.* These forms are to be used to list metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operations. They are also to be used for listing nonmetallic materials, such as plastics, rubber, or lumber, in mill product form. They are not to be used for listing castings or forgings, which shall be reported on SF 1428.

(2) *Standard Form 1428, Inventory Schedule B and SF 1429, Inventory Schedule B—Continuation Sheet.* These forms are to be used to list all contractor inventory (including plant equipment) for which Standard Forms 1426, 1430, 1432, or 1434 are not appropriate. However, agencies may direct listing of particular categories of plant equipment on agency forms when standard forms are not appropriate. (See 45.505-6 and 45.606-1.)

(3) *Standard Form 1430, Inventory Schedule C (Work in Process) and SF 1431, Inventory Schedule C—Continuation Sheet.* These forms are to be used to list all work in process.

(4) *Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment) and SF 1433, Inventory Schedule D—Continuation Sheet.* These forms are to be used to list such contractor inventory as dies, jigs, gauges, fixtures, special tools, and special test equipment.

(5) *Standard Form 1434, Termination Inventory Schedule E.* This is a short form to be used with SF 1438, Settlement Proposal (Short Form). Applicability is limited to termination settlement proposals under \$10,000.

(b) *Submission.* (1) Contractors shall report contractor inventory promptly after determining it to be excess, unless a later date is authorized by the contract or the plant clearance officer.

(2) Unless contract provisions or agency regulations prescribe otherwise, 12 copies of inventory schedules listing serviceable or salvable items and 6 copies of inventory schedules listing scrap items shall be presented to the plant clearance officer at the cognizant contract administration office.

(3) The standard inventory schedule forms may be electronically reproduced by contractors pursuant to 53.105, provided no change is made to the name, content or sequence of the data elements. All essential elements of data must be included and the form must be signed.

(4) The appropriate continuation sheet shall be used when more space is needed.

(5) Partial schedules may be submitted when they cover substantial portions of a particular property classification of contractor inventory. The first page of each schedule submitted shall be identified as partial or final in the title block of the schedule.

(6) The contractor should consult with the plant clearance officer when in doubt as to item descriptions or other inventory schedule requirements.

(c) *Grouping contractor inventory for reporting purposes.* All line items of contractor inventory shall be grouped into the following categories in the order indicated and reported on separate forms (line items may not be divided for the purpose of avoiding screening requirements):

(1) *Classified property.* This category includes all property bearing a security classification, regardless of acquisition cost. Classified property should be further subdivided into the same categories as unclassified property (see paragraph (c)(3) of this subsection).

(2) *Government-furnished property.* This category should be subdivided into the same categories as unclassified property (see paragraph (c)(3) of this subsection).

(3) *Unclassified property.* Unclassified property shall be subdivided as follows:

(i) Special tooling, regardless of acquisition cost.

(ii) Scrap, regardless of acquisition cost.

(iii) Salvage, regardless of acquisition cost.

(iv) Remaining property having a line item acquisition cost of less than \$1,000 (\$500 for furniture).

(v) Property having a line item acquisition cost of \$1,000 or more (\$500 for furniture), further separated into the following categories (these categories may be revised to suit agency needs):

(A) Aeronautical material and equipment.

(B) Electronic material and equipment.

(C) Special test equipment.

(D) Other serviceable or usable property.

(d) *General instructions for completing forms.* The inventory schedule forms are self-explanatory, except for the following general instructions and the specific instructions in paragraph (e) of this subsection.

(1) If the inventory applies solely to one contract modification, indicate the contract modification number in the same block as the prime contract number. If the inventory results from the termination of a contract, enter the termination docket number in the same block as the prime contract number.

(2) Provide in column b an accurate and complete commercial description for each item of serviceable contractor inventory. Where practical, show the manufacturer's name, address, and catalog number. Describe other items in sufficient detail to permit the Government to determine appropriate disposition. Include in descriptions for all line items the National Stock Number furnished to the contractor with Government-furnished property and the National Stock Number available in the contractor's property control system.

(3) Identify in column b any industrial diamonds, diamond swarf, and property containing economically recoverable quantities of precious metals by the type of metal and express the quantity of the metal in the appropriate weight unit or in the percentage of total content. In addition, hazardous material or property contaminated with hazardous material shall be identified as to the type of hazardous material.

(4) Enter in column c one of the following codes to indicate the condition of each item of material:

Code 1, Unused—good. Unused property that is usable without repairs and identical or interchangeable with new items from normal supply sources.

Code 2, Unused—fair. Unused property that is usable without repairs, but is deteriorated or damaged to the extent that utility is somewhat impaired.

Code 3, Unused—poor. Unused property that is usable without repairs, but is considerably deteriorated or damaged. Enough utility remains to classify the property better than salvage.

Code 4, Used—good. Used property that is usable without repairs and most of its useful life remains.

Code 5, Used—fair. Used property that is usable without repairs, but is somewhat worn or deteriorated and may soon require repairs.

Code 6, Used—poor. Used property that may be used without repairs, but is considerably worn or deteriorated to the degree that remaining utility is limited or major repairs will soon be required.

Code 7, Repairs required—good. Required repairs are minor and should not exceed 15 percent of original acquisition cost.

Code 8, Repairs required—fair. Required repairs are considerable and are estimated to range from 16 percent to 40 percent of original acquisition cost.

Code 9, Repairs required—poor. Required repairs are major because property is badly damaged, worn, or deteriorated, and are estimated to range from 41 percent to 65 percent of original acquisition cost.

Code X, Salvage. Property has some value in excess of its basic material content, but repair or rehabilitation to use for the originally intended purpose is clearly impractical. Repair for any use would exceed 65 percent of the original acquisition cost.

Code S, Scrap. Material that has no value except for its basic material content.

(5) Enter in columns e and f the standard or invoiced cost of the material being reported. If such data are not available, enter the estimated cost, identified by the symbol "(e)".

(6) Enter after the amount of the contractor's offer in column g the letter "A" if a credit for acquisition has been authorized or approved by the plant clearance officer. Enter the letter "C" if the amount represents your offer to acquire the item. In either case, enter the quantity on a second line if it is less than the full quantity shown in column d.

(e) *Instructions for completing specific forms.* The following instructions are in addition to the general instructions in paragraph (d) of this subsection and the self-explanatory blocks on the inventory forms.

(1) *Inventory Schedule A (Metals in Mill Product Form) (SF 1426)—(i) Classification.* List each type of metal (such as aluminum or carbon steel) on a separate form, with the name or alloy shown in the Property Classification block. List

like forms of the metal or alloy together in sequence. (For example, for carbon steel, group all the strip, followed by sheets, followed by the bar stock, etc.)

(ii) *Description*. Enter in column b the full commercial description and weight for all items. Identify the material specification entered in column b2 as either a Government specification or that of a particular industrial society or manufacturer. Complete columns b3, b4, and b5 to show the thickness, width, and length.

(2) *Inventory Schedule B (SF 1428)*—(i) *Classification*. Use a separate form for each classification. Enter the name of the classification in the Property Classification block. Items having no commercial value should be placed in a single classification designated “no commercial value.” The term “raw materials (other than metals)” means material in primary form. Examples are plastics, textiles, lumber, and chemicals. Arrange items in sequence under separate subheadings. For example, under the classification “chemicals,” group separately all acids, all alkalis, all resins, etc.

(ii) *Description*. In the inventory description for plant equipment (see 45.101 for definition), include the following as a minimum:

(A) Nomenclature or description of the item and Federal Supply Classification (see Cataloging Handbooks H2-1, H2-2, and H2-3).

(B) Federal Supply Code for Manufacturers (see Cataloging Handbooks H4-1 and H4-2) and, if available in the contractor’s property control system, the name and address of the equipment manufacturer.

(C) Model/part number.

(3) *Inventory Schedule C (Work-in-Process) (SF 1430)*—(i) *Classification*. No classification of items is required. Do not list finished components on this form (use SF 1428).

(ii) *Description*. Enter in column b a description in sufficient detail to permit the Government to determine the appropriate disposition. Estimate percentage of completion for each line item.

(iii) *Condition (column c)*. Generally, conditions X (salvage) or S (scrap) are applicable to work-in-process (see paragraph (d)(4) of this subsection).

(4) *Inventory Schedule D (Special Tooling and Special Test Equipment) (SF 1432)*—(i) *Classification*. Use a new form for each general classification of special tooling and special test equipment.

(ii) *Description*. Furnish a description which will enable the plant clearance officer or screener to determine the appropriate disposition, including the potential for reutilization. Include tool nomenclature, tool number, related product part number, and function which the tool performs. Designate special tooling usable for maintenance programs by placing the letter “M” in the left-hand column, “For Use of Contracting Agency Only.” Provide the end-item application and a

brief description of the test function for each unit of special test equipment.

(5) *Termination Inventory Schedule E (SF 1434)*—

(i) *Classification*. No special classification is required, but similar items should be grouped together. Several classifications may be listed on one form.

(ii) *Description*. Enter in column b the full commercial description of all items which have commercial value. For other items, furnish a description in sufficient detail to permit the Government to determine the appropriate disposition.

45.607 Scrap.

45.607-1 General.

(a) The contractor need not itemize scrap on inventory schedules if (1) the material is physically segregated in the contractor’s plant and (2) the contractor submits a statement describing the material, estimating its cost, and providing other information necessary for the plant clearance officer to verify whether the property is scrap. The contractor shall sort the scrap to the extent economically feasible to assure the highest sale proceeds.

(b) The plant clearance officer shall review the schedules of property reported as scrap and, if necessary, physically inspect the property involved. If the plant clearance officer determines that any of the property is serviceable, usable, or salvable, the contractor shall resubmit it on appropriate inventory schedules.

45.607-2 Recovering precious metals.

(a) MMS shall assure that contractors generating contractor inventory containing precious metal-bearing scrap identify and promptly report such items. MMS is also responsible for establishing and maintaining a program for recovering precious metals.

(b) Precious metals shall be packaged in nonporous, smooth containers in a manner to prevent loss through leakage or damage to the containers. (Glass containers shall not be used.) Grindings or sweepings shall not be packaged in paper or wooden containers, because loss occurs by adhesion to the containers. Containers shall be marked to show the type of precious metals.

(c) The shipping document shall indicate the net weight of each item to the nearest ounce (troy or avoirdupois). Shipment shall be made by the most economical means available, consistent with adequate safeguards to prevent loss or theft.

45.608 Screening of contractor inventory.

45.608-1 General.

(a) Serviceable or usable property included in the contractor’s inventory schedules that is not purchased or retained by

the prime contractor or subcontractor or returned to suppliers shall be screened for use by Government agencies before disposition by donation or sale. Agencies shall assure the widespread dissemination of information concerning the availability of contractor inventory.

(b) There are four categories of screening: standard, agency, limited, and special items. The plant clearance officer shall determine the categories of screening required, initiate

prescribed screening, and assure accomplishment of transfer and donation. Table 45-1 lists the type of property and screening period for each of these categories. When circumstances warrant, the plant clearance officer may extend the period for agency screening or arrange for more extensive screening than that prescribed. In the event of a conflict between Table 45-1 and a specific contract requirement, items shall be screened as provided by the contract.

TABLE 45-1—SCREENING REQUIREMENTS BY TYPE OF PROPERTY

<u>Screening Categories</u>	<u>Type of Property</u>	<u>Period</u>
Standard	Line items valued at \$1,000 or more (\$500 for furniture).	90 days/(see 45.608-2)
Agency	Special tooling, perishables, property bearing a classification, property dangerous to public health and safety, regardless of acquisition cost, and agency-peculiar property.	30 days/(see 45.608-3)
Limited	Special tooling, scrap and salvage, property in condition codes 3, 6, 9, X, and S, work-in-process, inventory schedules (the total acquisition cost of which is reported as \$2,500 or less), and line items of less than \$1,000 (\$500 for furniture) (except perishables, property bearing a security classification, and property dangerous to public health and safety).	30 days/(see 45.608-4)
Special Items	Special test equipment with standard components.	(see 45.608-5(a))
	Special test equipment without standard components.	(see 45.608-5(b))
	Printing equipment.	(see 45.608-5(c))
	Nuclear materials.	(see 45.608-5(d))

45.608-2 Standard screening.

(a) Standard screening applies to serviceable property with a line item value of \$1,000 or more (\$500 for furniture) that does not meet the criteria for another screening category.

(b) Standard screening begins on the date the plant clearance officer receives acceptable contractor inventory schedules and ends 90 days thereafter. The period is broken into three phases as follows:

(1) *1st through 30th day*—screening by the contracting agency. The agency shall screen the listed items for its use. When screening is completed, the plant clearance officer shall delete the retained items from the schedules.

(2) *31st through 75th day*—screening by all Federal agencies. Not later than the 31st day, the plant clearance officer shall send four copies of the revised schedules and Standard Form (SF) 120, Report of Excess Personal Property, to the General Services Administration (GSA) regional office that serves the region in which the property is located. If the plant clearance officer receives a request for property transfer

after submission of the SF 120, and before receiving a GSA property transfer order, a prompt request shall be forwarded to GSA for approval to withdraw the items from the inventory schedule. The regional GSA office will prepare and issue circulars and catalogs to all Federal agencies within the region. GSA will honor requests for transfer of property on a “first-come first-served” basis through the 75th day. The GSA regional office will transmit to the plant clearance officer the approved orders and shipping instructions for property to be transferred. The 75th day is the surplus release date and will be shown on the SF 120. The plant clearance officer may not extend this date.

(3) *76th through 90th day*—screening by GSA for possible donation. During this period, GSA will arrange for screening of all remaining property for possible donation to eligible donees. Procedures for donation are in 45.609. The 90th day is the screening completion date and will be shown on the SF 120. The plant clearance officer shall not extend this date.

45.608-3 Agency screening.

Agency screening is the procedure for screening certain types of property (see Table 45-1) only within the contracting agency. The screening period begins on the date the plant clearance officer receives acceptable inventory schedules and ends 30 days later.

45.608-4 Limited screening.

(a) Items that are scrap or salvage or that otherwise have a limited potential for use (except special tooling) are not ordinarily subject to standard or agency screening. The plant clearance officer shall include listings of such property in a special file, which shall be made available to GSA for limited screening. The screening period for such property begins on the date the plant clearance officer receives acceptable inventory schedules and ends 30 days later. This period is apportioned into two phases, as follows:

(1) *1st through 15th day*—GSA selection of items for Federal utilization.

(2) *16th through 30th day*—GSA selection of items for donation.

(b) For special tooling, the screening period described in paragraph (a) of this section begins upon completion of agency screening.

45.608-5 Special items screening.

Special procedures are established for the following types of property:

(a) *Special test equipment with standard components.*

(1) Contractors reporting special test equipment that contains standard, general, or multipurpose components will describe the composite unit to clearly reflect its capability. Standard components that can be economically removed and reused will be listed and described in sufficient detail to permit screening.

(2) If the contractor has a requirement for the standard components to meet other approved special test equipment or facilities requirements, the contractor shall annotate the SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment), to reflect this requirement. Screening shall be accomplished in accordance with agency procedures for the first 30 days. If there are no agency requirements for the composite unit, and if the administrative contracting officer approves the retention, the contractor shall have priority for the standard components for which it has indicated a requirement.

(3) Standard components that have not been retained by the agency or the contractor shall be screened in accordance with standard requirements for the 31st through 75th day. Standard components shall not be removed from the composite unit until a requirement has been established. If no requirements exist, the composite units shall be donated or sold in accordance with prescribed procedures.

(b) *Special test equipment without standard components.* Special test equipment without standard components shall receive agency screening for 30 days. Items for which no requirements exist shall receive limited screening for an additional 30 days.

(c) *Nuclear materials.* (1) The possession, use, and transfer of certain nuclear material(s) are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC). The materials are defined as follows:

(i) *By-product material*—any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to producing or using special nuclear material.

(ii) *Source material*—uranium or thorium, or any combination thereof, in any physical or chemical form; or ores which contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(iii) *Special nuclear material*—plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material that the NRC determines to be special nuclear material (but not including source material); or any material artificially enriched by any nuclear material.

(2) Plant clearance officers shall submit listings of excess nuclear material in the categories described above for screening by the contracting activity. If there are no requirements, the ultimate method of disposal shall be dependent upon the license issued by the NRC or the respective states and pertinent Federal and agency regulations.

45.608-6 [Reserved]**45.608-7 Reimbursement of costs for transfer of contractor inventory.**

The contracting agency shall not be reimbursed for the acquisition cost of any property selected by another agency or for overhead or administrative costs associated with such property. The transferee will pay any transportation costs that are not the contractor's responsibility. Costs for packing, crating, preparation for shipment, and loading of contractor inventory are chargeable to the contract for assets subject to the Government property clauses at 52.245-2, Government Property (Fixed-Price Contracts), and 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), and such costs are ordinarily included in the contractor's settlement proposal for termination inventory. The transferee will pay such costs for property subject to 52.245-7, Government Property (Consolidated Facilities), or 52.245-10, Government Property (Facilities Acquisition), or 52.245-11, Government Property (Facilities Use), unless such costs are otherwise the contractor's responsibility. The contract administration office is responsible for obtaining pack-

ing, crating, and handling services. To accelerate plant clearance, the transferee shall include all appropriate data, including funding data, in the transfer or shipping document.

45.608-8 [Reserved]

45.609 [Reserved]

45.610 Sale of surplus contractor inventory.

45.610-1 Responsibility.

(a) The Public Printer exercises general supervision and direction over the disposition of surplus personal property, including sales of surplus contractor inventory. Policy and procedures for sales of contractor inventory are contained in GPO Instruction 810.11A.

45.610-2 [Reserved]

45.610-3 Proceeds of sale.

Proceeds of any sale are to be credited to the GPO Revolving Fund (44 U.S.C. 309).

45.610-4 Contractor inventory in foreign countries.

Contractor inventory located in foreign countries shall be sold or disposed of in accordance with agency procedures (see 40 U.S.C. 511-514).

45.611 Destruction or abandonment.

(a) Surplus property may be destroyed or abandoned only after every effort has been made to dispose of it by other authorized methods. Before authorizing destruction or abandonment, the plant clearance officer shall determine in writing that—

- (1) The property has no commercial value and no value to the Government;
- (2) The estimated cost of care and handling is greater than the probable sale price; or
- (3) Because of its nature, the property constitutes a danger to public health, safety, or welfare.

(b) Unless permitted by the contract, no contractor inventory shall be abandoned on the contractor's premises without the contractor's written consent.

(c) Surplus property for which a determination has been made under paragraph (a)(1) or (2) of this section may, however, be donated to public bodies in lieu of abandonment or destruction. All costs incident to donation shall be borne by the donee.

45.612 Removal and storage.

45.612-1 General.

Contractor inventory shall be removed from the contractor's premises as soon as possible to preclude storage expenses.

45.612-2 Special storage at the contractor's risk.

When the contractor finds it necessary to remove property from the premises before expiration of the plant clearance period, the contractor may, with the concurrence of the plant clearance officer, store property in a warehouse or other storage location on or off the contractor's premises. Storage shall in no way modify the contractor's responsibility for the property. The expense of storage, including any cost incident to the transportation to and from the storage area, shall normally be borne by the contractor and shall not be charged directly or indirectly to Government contracts unless the contracting officer determines that the storage is for the convenience of the Government.

45.612-3 Special storage at the Government's expense.

(a) Contractor inventory may be stored at the Government's expense only when the contracting officer determines that it should be retained in storage for anticipated use.

(b) When the plant clearance officer recommends that the contracting office execute a storage agreement with the contractor, the request shall be accompanied with adequate data to justify the agreement (*e.g.*, property to be stored, storage period, and cost to the Government).

(c) If the contractor will not agree to storage on its premises, the plant clearance officer shall submit adequate information to permit a decision by the contracting office for storage on a Government or commercial facility (*e.g.*, storage space required; necessary packing, crating, and shipping services; and information as to available Government or commercial storage facilities in the local area).

45.613 Property disposal determinations.

Written determinations supporting abandonment, destruction, or other appropriate disposition shall be made by the plant clearance officer and reviewed by an appropriate reviewing authority within the agency.

45.614 Subcontractor inventory.

(a) The disposal policies and procedures in this subpart are applicable to contractor inventory in the possession of subcontractors, except inventory under terminated subcontracts for which the termination contracting officer has authorized the prime contractor to conclude settlements (see 49.108-4).

(b) Subcontractors in all tiers shall prepare inventory schedules in accordance with the requirements of this subpart. Forms prescribed for use by prime contractors may be used

by subcontractors, but their use is not required if substantially equivalent information is provided. Subcontractor inventory and any disposal recommendations (including scrap recommendations) shall be reported through the next-higher-tier subcontractor to the contractor, who is responsible for reporting property to the cognizant plant clearance officer. The prime contractor and each subcontractor are responsible for review and approval of inventory schedules submitted by their respective next-lower-tier subcontractors. This includes review and, if necessary, physical survey of subcontractor inventory that is contained in a termination settlement proposal to assure that it is physically, technically, and quantitatively allocable to the contract, and cannot be reasonably diverted to other work of the subcontractor.

(c) Any rights which the prime contractor has or acquires in the inventory of first-tier or lower-tier subcontractors shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government in accordance with the provisions of the prime contract.

(d) Contract administration offices shall assure that prime contractors have performed adequate allocability reviews of subcontractor inventory and have determined that materials

reasonably usable on other prime or subcontractor work are not included in a termination settlement proposal. The plant clearance officer for the prime contractor plant is responsible for determining the adequacy of screening, allocability reviews, and proper crediting of proceeds for the disposal of subcontractor inventory by the prime contractor. Assistance should generally be secured from other officers for verification, determination of allocability, local screening, and plant clearance action when property is located outside the geographic area of the cognizant contract administration office.

45.615 Accounting for contractor inventory.

Following disposition of all contractor inventory, and after due application of proceeds, the plant clearance officer shall prepare SF 1424, Inventory Disposal Report, accounting for all property reported by the contractor and its disposition. The report shall indicate any inventory lost, damaged, destroyed, or otherwise unaccounted for, as well as any changes in quantity or value of inventory made by the contractor after submission of the initial schedules. The report shall be transmitted to the property administrator or, for termination inventory, to the termination contracting officer.

* * * * *

This page intentionally left blank.

46.000 Scope of part.

This part prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

Subpart 46.1—General**46.101 Definitions.**

As used in this part—

“Acceptance” means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

“Conditional acceptance” means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

“Contract quality requirements” means the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

“Critical nonconformance” means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

“Government contract quality assurance” means the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

“Major nonconformance” means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

“Minor nonconformance” means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

“Off-the-shelf item” means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item may be commercial or produced to military or Federal specifications or description.

“Patent defect” means any defect which exists at the time of acceptance and is not a latent defect.

“Subcontractor” (see 44.101).

“Testing” means that element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

46.102 Policy.

MMS shall ensure that—

(a) Contracts include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the Government's interest;

(b) Supplies or services tendered by contractors meet contract requirements;

(c) Government contract quality assurance is conducted before acceptance (except as otherwise provided in this part), by or under the direction of Government personnel;

(d) No contract precludes the Government from performing inspection;

(e) Nonconforming supplies or services are rejected, except as otherwise provided in 46.407;

(f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and

(g) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see Subpart 42.1).

46.103 Contracting office responsibilities.

Contracting offices are responsible for—

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

(b) Including in solicitations and contracts the appropriate requirements for the contractor's control of quality for the supplies or services to be acquired;

(c) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see 42.301 and 46.104(f));

(d) When contract administration is retained (see 42.201), verifying that the contractor fulfills the contract quality requirements; and

(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when considering the acceptability of supplies or services which do not meet contract requirements.

46.104 Contract administration office responsibilities.

When a contract is assigned for administration to the contract administration office cognizant of the contractor's plant, that office, unless specified otherwise, shall—

(a) Develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;

(b) Perform all actions necessary to verify whether the supplies or services conform to contract quality requirements;

(c) Maintain, as part of the performance records of the contract, suitable records reflecting—

(1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, as well as action to correct defects.

(d) Implement any specific written instructions from the contracting office;

(e) Report to the contracting office any defects observed in design or technical requirements, including contract quality requirements; and

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see 46.103(c)).

46.105 Contractor responsibilities.

(a) The contractor is responsible for carrying out its obligations under the contract by—

(1) Controlling the quality of supplies or services;

(2) Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;

(3) Ensuring that vendors or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and

(4) Maintaining substantiating evidence, when required by the contract, that the supplies or services conform to contract quality requirements, and furnishing such information to the Government as required.

(b) The contractor may be required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government (see 46.202).

(c) The control of quality by the contractor may relate to, but is not limited to—

(1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;

(2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;

(3) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;

(4) Reliability and maintainability assessment (life, endurance, and continued readiness);

(5) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Government;

(6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;

(7) Preservation, packaging, packing, and marking; and

(8) Procedures and processes for services to ensure that services meet contract performance requirements.

(d) The contractor is responsible for performing all inspections and tests required by the contract except those specifically reserved for performance by the Government (see 46.201(c)).

Subpart 46.2—Contract Quality Requirements**46.201 General.**

(a) The contracting officer shall include in the solicitation and contract the appropriate quality requirements. The type and extent of contract quality requirements needed depends on the particular acquisition and may range from inspection at time of acceptance to a requirement for the contractor's implementation of a comprehensive program for controlling quality.

(b) As feasible, solicitations and contracts may provide for alternative, but substantially equivalent, inspection methods to obtain wide competition and low cost. The contracting officer may also authorize contractor-recommended alternatives when in the Government's interest and approved by the activity responsible for technical requirements.

(c) Although contracts generally make contractors responsible for performing inspection before tendering supplies to the Government, there are situations in which contracts will provide for specialized inspections to be performed solely by the Government. Among situations of this kind are—

(1) Tests that require use of specialized test equipment or facilities not ordinarily available in suppliers' plants or commercial laboratories (*e.g.*, ballistic testing of ammunition, unusual environmental tests, and simulated service tests); and

(2) Contracts that require Government testing for first article approval (see Subpart 9.3).

(d) Except as otherwise specified by the contract, required contractor testing may be performed in the contractor's or subcontractor's laboratory or testing facility, or in any other laboratory or testing facility acceptable to the Government.

46.202 Types of contract quality requirements.

Contract quality requirements fall into four general categories, depending on the extent of quality assurance needed by the Government for the acquisition involved.

46.202-1 Contracts for commercial items.

When acquiring commercial items (see Part 12), the Government shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

46.202-2 Government reliance on inspection by contractor.

(a) Except as specified in (b) of this section, the Government shall rely on the contractor to accomplish all inspection

and testing needed to ensure that supplies or services acquired at or below the simplified acquisition threshold conform to contract quality requirements before they are tendered to the Government (see 46.301).

(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—

(1) The nature of the supplies and services being purchased and their intended use;

(2) The potential losses in the event of defects;

(3) The likelihood of uncontested replacement or correction of defective work; and

(4) The cost of detailed Government inspection.

46.202-3 Standard inspection requirements.

(a) Standard inspection requirements are contained in the clauses prescribed in 46.302 through 46.308, and 46.310, and in the product and service specifications that are included in solicitations and contracts.

(b) The clauses referred to in (a) of this section—

(1) Require the contractor to provide and maintain an inspection system that is acceptable to the Government;

(2) Give the Government the right to make inspections and tests while work is in process; and

(3) Require the contractor to keep complete, and make available to the Government, records of its inspection work.

46.202-4 Higher-level contract quality requirements.

(a) Requiring compliance with higher-level quality standards is appropriate in solicitations and contracts for complex or critical items (see 46.203(b) and (c)) or when the technical requirements of the contract require—

(1) Control of such things as work operations, in-process controls, and inspection; or

(2) Attention to such factors as organization, planning, work instructions, documentation control, and advanced metrology.

(b) When the contracting officer, in consultation with technical personnel, finds it is in the Government's interest to require that higher-level quality standards be maintained, the contracting officer shall use the clause prescribed at 46.311. The contracting officer shall indicate in the clause which higher-level quality standards will satisfy the Government's requirement. Examples of higher-level quality standards are ISO 9001, 9002, or 9003; ANSI/ISO/ASQ Q9001-2000;

ANSI/ASQC Q9001, Q9002, or Q9003; QS-9000; AS-9000; ANSI/ASQC E4; and ANSI/ASME NQA-1.

46.203 Criteria for use of contract quality requirements.

The extent of contract quality requirements, including contractor inspection, required under a contract shall usually be based upon the classification of the contract item (supply or service) as determined by its technical description, its complexity, and the criticality of its application.

(a) *Technical description.* Contract items may be technically classified as—

(1) Commercial (described in commercial catalogs, drawings, or industrial standards; see Part 2); or

(2) Military-Federal (described in Government drawings and specifications).

(b) *Complexity.* (1) Complex items have quality characteristics, not wholly visible in the end item, for which contractual conformance must be established progressively through precise measurements, tests, and controls applied during purchasing, manufacturing, performance, assembly, and functional operation either as an individual item or in conjunction with other items.

(2) Noncomplex items have quality characteristics for which simple measurement and test of the end item are sufficient to determine conformance to contract requirements.

(c) *Criticality.* (1) A critical application of an item is one in which the failure of the item could injure personnel or jeopardize a vital agency mission. A critical item may be either peculiar, meaning it has only one application, or common, meaning it has multiple applications.

(2) A noncritical application is any other application. Noncritical items may also be either peculiar or common.

Subpart 46.3—Contract Clauses

46.301 Contractor inspection requirements.

The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be at or below the simplified acquisition threshold and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-2(b).

46.302 Fixed-price supply contracts.

The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.

46.303 Cost-reimbursement supply contracts.

The contracting officer shall insert the clause at 52.246-3, Inspection of Supplies—Cost-Reimbursement, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated.

46.304 Fixed-price service contracts.

The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion is in the Government's interest.

46.305 Cost-reimbursement service contracts.

The contracting officer shall insert the clause at 52.246-5, Inspection of Services—Cost Reimbursement, in solicitations and contracts for services, or supplies that involve the furnishing

of services, when a cost-reimbursement contract is contemplated.

46.306 Time-and-material and labor-hour contracts.

The contracting officer shall insert the clause at 52.246-6, Inspection—Time-and-Material and Labor-Hour, in solicitations and contracts when a time-and-material contract or a labor-hour contract is contemplated. If Government inspection and acceptance are to be performed at the contractor's plant, the contracting officer shall use the clause with its Alternate I.

46.307 Fixed-price research and development contracts.

(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development—Fixed-Price, in solicitations and contracts for research and development when—

(1) The primary objective of the contract is the delivery of end items other than designs, drawings, or reports,

(2) A fixed-price contract is contemplated, and

(3) The contract amount is expected to exceed the simplified acquisition threshold; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.

(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.

46.308 Cost-reimbursement research and development contracts.

The contracting officer shall insert the clause at 52.246-8, Inspection of Research and Development—Cost-Reimbursement, in solicitations and contracts for research and development when (a) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, and (b) a cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate. If it is contemplated that the contract will be on a no-fee basis, the contracting officer shall use the clause with its Alternate I.

46.309 Research and development contracts (short form).

The contracting officer shall insert the clause at 52.246-9, Inspection of Research and Development (Short Form), in solicitations and contracts for research and development when the clause prescribed in 46.307 or the clause prescribed in 46.308 is not used.

46.310 Facilities contracts.

The contracting officer shall insert the clause at 52.246-10, Inspection of Facilities, in solicitations and contracts when a facilities contract is contemplated.

46.311 Higher-level contract quality requirement.

The contracting officer shall insert the clause at 52.246-11, Higher-Level Contract Quality Requirement, in solicitations and contracts when the inclusion of a higher-level contract quality requirement is appropriate (see 46.202-4).

46.312 Construction contracts.

The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.

46.313 Contracts for dismantling, demolition, or removal of improvements.

The contracting officer shall insert the clause at 52.246-13, Inspection—Dismantling, Demolition, or Removal of Improvements, in solicitations and contracts for dismantling, demolition, or removal of improvements.

46.314 Transportation contracts.

The contracting officer shall insert the clause at 52.246-14, Inspection of Transportation, in solicitations and contracts for

freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 10721, 13712. (See Part 47, Transportation.)

46.315 Certificate of conformance.

The contracting officer shall insert the clause at 52.246-15, Certificate of Conformance, in solicitations and contracts for supplies or services when the conditions in 46.504 apply.

46.316 Responsibility for supplies.

The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold and inclusion of the clause is authorized under agency procedures.

Subpart 46.4—Government Contract Quality Assurance

46.401 General.

(a) Government contract quality assurance shall be performed at such times (including any stage of manufacture or performance of services) and places (including subcontractors' plants) as may be necessary to determine that the supplies or services conform to contract requirements. Quality assurance surveillance plans should be prepared in conjunction with the preparation of the statement of work. The plans should specify—

- (1) All work requiring surveillance; and
- (2) The method of surveillance.

(b) Each contract shall designate the place or places where the Government reserves the right to perform quality assurance.

(c) If the contract provides for performance of Government quality assurance at source, the place or places of performance may not be changed without the authorization of the contracting officer.

(d) If a contract provides for delivery and acceptance at destination and the Government inspects the supplies at a place other than destination, the supplies shall not ordinarily be reinspected at destination, but should be examined for quantity, damage in transit, and possible substitution or fraud.

(e) Government inspection shall be performed by or under the direction or supervision of Government personnel.

(f) Government inspection shall be documented on an inspection or receiving report form or commercial shipping document/packing list, under agency procedures (see Subpart 46.6).

(g) Agencies may prescribe the use of inspection approval or disapproval stamps to identify and control supplies and material that have been inspected for conformance with contract quality requirements.

46.402 Government contract quality assurance at source.

Agencies shall perform contract quality assurance, including inspection, at source if—

(a) Performance at any other place would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies, or from the delay in making necessary corrections;

(c) Special required instruments, gauges, or facilities are available only at source;

(d) Performance at any other place would destroy or require the replacement of costly special packing and packaging;

(e) Government inspection during contract performance is essential; or

(f) It is determined for other reasons to be in the Government's interest.

46.403 Government contract quality assurance at destination.

(a) Government contract quality assurance that can be performed at destination is normally limited to inspection of the supplies or services. Inspection shall be performed at destination under the following circumstances—

(1) Supplies are purchased off-the-shelf and require no technical inspection;

(2) Necessary testing equipment is located only at destination;

(3) Perishable subsistence supplies purchased within the United States, except that those supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;

(4) Brand name products purchased for authorized resale through commissaries or similar facilities (however, supplies destined for direct overseas shipment may be accepted by the contracting officer or an authorized representative on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point);

(5) The products being purchased are processed under direct control of the National Institutes of Health or the Food and Drug Administration of the Department of Health and Human Services;

(6) The contract is for services performed at destination; or

(7) It is determined for other reasons to be in the Government's interest.

(b) Overseas inspection of supplies shipped from the United States shall not be required except in unusual circumstances, and then only when the contracting officer determines in advance that inspection can be performed or makes necessary arrangements for its performance.

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

(a) In determining the type and extent of Government contract quality assurance to be required for contracts at or below the simplified acquisition threshold, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-2).

(b) When the conditions in 46.202-2(b) apply, the following policies shall govern:

(1) Unless a special situation exists, the Government shall inspect contracts at or below the simplified acquisition threshold at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.

(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications.

(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.

46.405 Subcontracts.

(a) Government contract quality assurance on subcontracted supplies or services shall be performed only when required in the Government's interest. The primary purpose is to assist the contract administration office cognizant of the prime contractor's plant in determining the conformance of subcontracted supplies or services with contract requirements or to satisfy one or more of the factors included in (b) of this section. It does not relieve the prime contractor of any responsibilities under the contract. When appropriate, the prime contractor shall be requested to arrange for timely Government access to the subcontractor facility.

(b) The Government shall perform quality assurance at the subcontract level when—

(1) The item is to be shipped from the subcontractor's plant to the using activity and inspection at source is required;

(2) The conditions for quality assurance at source are applicable (see 46.402);

(3) The contract specifies that certain quality assurance functions, which can be performed only at the subcontractor's plant, are to be performed by the Government; or

(4) It is otherwise required by the contract or determined to be in the Government's interest.

(c) Supplies or services for which certificates, records, reports, or similar evidence of quality are available at the prime contractor's plant shall not be inspected at the subcontractor's plant, except occasionally to verify this evidence or when required under (b) of this section.

(d) All oral and written statements and contract terms and conditions relating to Government quality assurance actions at the subcontract level shall be worded so as not to—

(1) Affect the contractual relationship between the prime contractor and the Government, or between the prime contractor and the subcontractor;

(2) Establish a contractual relationship between the Government and the subcontractor; or

(3) Constitute a waiver of the Government's right to accept or reject the supplies or services.

46.406 Foreign governments.

Government contract quality assurance performed for foreign governments or international agencies shall be administered according to the foreign policy and security objectives of the United States. Such support shall be furnished only when consistent with or required by legislation, executive orders, or agency policies concerning mutual international programs.

46.407 Nonconforming supplies or services.

(a) The contracting officer should reject supplies or services not conforming in all respects to contract requirements (see 46.102). In those instances where deviation from this policy is found to be in the Government's interest, such supplies or services may be accepted only as authorized in this section.

(b) The contracting officer ordinarily must give the contractor an opportunity to correct or replace nonconforming supplies or services when this can be accomplished within the required delivery schedule. Unless the contract specifies otherwise (as may be the case in some cost-reimbursement contracts), correction or replacement must without additional cost to the Government. Paragraph (e)(2) of the clause at 52.246-2, Inspection of Supplies—Fixed-Price, reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(c)(1) In situations not covered by paragraph (b) of this section, the contracting officer ordinarily must reject supplies or services when the nonconformance is critical or major or the supplies or services are otherwise incomplete. However, there may be circumstances (*e.g.*, reasons of economy or urgency) when the contracting officer determines acceptance or conditional acceptance of supplies or services is in the best interest of the Government. The contracting officer must make this determination based upon—

(i) Advice of the technical activity that the item is safe to use and will perform its intended purpose;

(ii) Information regarding the nature and extent of the nonconformance or otherwise incomplete supplies or services;

(iii) A request from the contractor for acceptance of the nonconforming or otherwise incomplete supplies or services (if feasible);

(iv) A recommendation for acceptance, conditional acceptance, or rejection, with supporting rationale; and

(v) The contract adjustment considered appropriate, including any adjustment offered by the contractor.

(2) The cognizant contract administration office, or other Government activity directly involved, must furnish this data to the contracting officer in writing, except that in urgent cases it may be furnished orally and later confirmed in

writing. Before making a decision to accept, the contracting officer must obtain the concurrence of the activity responsible for the technical requirements of the contract and, where health factors are involved, of the responsible health official of the agency concerned.

(d) If the nonconformance is minor, the cognizant contract administration office may make the determination to accept or reject, except where this authority is withheld by the contracting office of the contracting activity. To assist in making this determination, the contract administration office may establish a joint contractor-contract administrative office review group. Acceptance of supplies and services with critical or major nonconformances is outside the scope of the review group.

(e) The contracting officer must discourage the repeated tender of nonconforming supplies or services, including those with only minor nonconformances, by appropriate action, such as rejection and documenting the contractor's performance record.

(f) When supplies or services are accepted with critical or major nonconformances as authorized in paragraph (c) of this section, the contracting officer must modify the contract to provide for an equitable price reduction or other consideration. In the case of conditional acceptance, amounts withheld from payments generally should be at least sufficient to cover the estimated cost and related profit to correct deficiencies and complete unfinished work. The contracting officer must document in the contract file the basis for the amounts withheld. For services, the contracting officer can consider identifying the value of the individual work requirements or tasks (subdivisions) that may be subject to price or fee reduction. This value may be used to determine an equitable adjustment

for nonconforming services. However, when supplies or services involving minor nonconformances are accepted, the contract need not be modified unless it appears that the savings to the contractor in fabricating the nonconforming supplies or performing the nonconforming services will exceed the cost to the Government of processing the modification.

(g) Notices of rejection must include the reasons for rejection and be furnished promptly to the contractor. Promptness in giving this notice is essential because, if timely nature of rejection is not furnished, acceptance may in certain cases be implied as a matter of law. The notice must be in writing if—

- (1) The supplies or services have been rejected at a place other than the contractor's plant;
- (2) The contractor persists in offering nonconforming supplies or services for acceptance; or
- (3) Delivery or performance was late without excusable cause.

46.408 Single-agency assignments of Government contract quality assurance.

(a) Government-wide responsibility for quality assurance support for acquisitions of certain commodities is assigned as follows:

- (1) For drugs, biologics, and other medical supplies—the Food and Drug Administration;
- (2) For food, except seafood—the Department of Agriculture.
- (3) For seafood—the National Marine Fisheries Service of the Department of Commerce.

(b) Agencies requiring quality assurance support for acquiring these supplies should request the support directly from the cognizant office.

Subpart 46.5—Acceptance

46.501 General.

Acceptance constitutes acknowledgment that the supplies or services conform with applicable contract quality and quantity requirements, except as provided in this subpart and subject to other terms and conditions of the contract. Acceptance may take place before delivery, at the time of delivery, or after delivery, depending on the provisions of the terms and conditions of the contract. Supplies or services shall ordinarily not be accepted before completion of Government contract quality assurance actions (however, see 46.504). Acceptance shall ordinarily be evidenced by execution of an acceptance certificate on an inspection or receiving report form or commercial shipping document/packing list.

46.502 Responsibility for acceptance.

Acceptance of supplies or services is the responsibility of the contracting officer. When this responsibility is assigned to a cognizant contract administration office or to another agency (see 42.202(g)), acceptance by that office or agency is binding on the Government.

46.503 Place of acceptance.

Each contract shall specify the place of acceptance. Contracts that provide for Government contract quality assurance at source shall ordinarily provide for acceptance at source. Contracts that provide for Government contract quality assurance at destination shall ordinarily provide for acceptance at destination. (For transportation terms, see Subpart 47.3.) Supplies accepted at a place other than destination shall not be reinspected at destination for acceptance purposes, but should be examined at destination for quantity, damage in transit, and possible substitution or fraud.

46.504 Certificate of conformance.

A certificate of conformance (see 46.315) may be used in certain instances instead of source inspection (whether the contract calls for acceptance at source or destination) at the

discretion of the contracting officer if the following conditions apply:

(a) Acceptance on the basis of a contractor's certificate of conformance is in the Government's interest.

(b)(1) Small losses would be incurred in the event of a defect; or

(2) Because of the contractor's reputation or past performance, it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest. In no case shall the Government's right to inspect supplies under the inspection provisions of the contract be prejudiced.

46.505 Transfer of title and risk of loss.

(a) Title to supplies shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the contractor until, and shall pass to the Government upon—

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

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this section shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming supplies remains with the contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this section shall apply.

(d) Under paragraph (b) of this section, the contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(e) The policy expressed in (a) through (d) of this section is specified in the clause at 52.246-16, Responsibility for Supplies, which is prescribed in 46.316.

Subpart 46.6—Material Inspection and Receiving Reports

receiving reports and commercial shipping document/packing lists to evidence Government inspection (see 46.401) and acceptance (see 46.501).

46.601 General.

MMS shall prescribe procedures and instructions for the use, preparation, and distribution of material inspection and

Subpart 46.7—Warranties

46.701 [Reserved]

46.702 General.

(a) The principal purposes of a warranty in a Government contract are—

(1) To delineate the rights and obligations of the contractor and the Government for defective items and services; and

(2) To foster quality performance.

(b) Generally, a warranty should provide—

(1) A contractual right for the correction of defects notwithstanding any other requirement of the contract pertaining to acceptance of the supplies or services by the Government; and

(2) A stated period of time or use, or the occurrence of a specified event, after acceptance by the Government to assert a contractual right for the correction of defects.

(c) The benefits to be derived from a warranty must be commensurate with the cost of the warranty to the Government.

46.703 Criteria for use of warranties.

The use of warranties is not mandatory. In determining whether a warranty is appropriate for a specific acquisition, the contracting officer shall consider the following factors:

(a) *Nature and use of the supplies or services.* This includes such factors as—

- (1) Complexity and function;
- (2) Degree of development;
- (3) State of the art;
- (4) End use;
- (5) Difficulty in detecting defects before acceptance;

and

(6) Potential harm to the Government if the item is defective.

(b) *Cost.* Warranty costs arise from—

(1) The contractor's charge for accepting the deferred liability created by the warranty; and

(2) Government administration and enforcement of the warranty (see paragraph (c) of this section).

(c) *Administration and enforcement.* The Government's ability to enforce the warranty is essential to the effectiveness of any warranty. There must be some assurance that an adequate administrative system for reporting defects exists or can be established. The adequacy of a reporting system may depend upon such factors as the—

- (1) Nature and complexity of the item;
- (2) Location and proposed use of the item;
- (3) Storage time for the item;
- (4) Distance of the using activity from the source of the item;

(5) Difficulty in establishing existence of defects; and

(6) Difficulty in tracing responsibility for defects.

(d) *Trade practice.* In many instances an item is customarily warranted in the trade, and, as a result of that practice, the cost of an item to the Government will be the same whether or not a warranty is included. In those instances, it would be in the Government's interest to include such a warranty.

(e) *Reduced requirements.* The contractor's charge for assumption of added liability may be partially or completely offset by reducing the Government's contract quality assurance requirements where the warranty provides adequate assurance of a satisfactory product.

46.704 Authority for use of warranties.

The use of a warranty in an acquisition shall be approved in accordance with agency procedures.

46.705 Limitations.

(a) Except for the warranties in the clauses at 52.246-3, Inspection of Supplies—Cost-Reimbursement, and 52.246-8, Inspection of Research and Development—Cost-Reimbursement, the contracting officer shall not include warranties in cost-reimbursement contracts, unless authorized in accordance with agency regulations (see 46.708).

(b) Warranty clauses shall not limit the Government's rights under an inspection clause (see Subpart 46.3) in relation to latent defects, fraud, or gross mistakes that amount to fraud.

(c) Except for warranty clauses in construction contracts, warranty clauses shall provide that the warranty applies notwithstanding inspection and acceptance or other clauses or terms of the contract.

46.706 Warranty terms and conditions.

(a) To facilitate the pricing and enforcement of warranties, the contracting officer shall ensure that warranties clearly state the—

(1) Exact nature of the item and its components and characteristics that the contractor warrants;

(2) Extent of the contractor's warranty including all of the contractor's obligations to the Government for breach of warranty;

(3) Specific remedies available to the Government; and

(4) Scope and duration of the warranty.

(b) The contracting officer shall consider the following guidelines when preparing warranty terms and conditions:

(1) *Extent of contractor obligations.* (i) Generally, the contractor's obligations under warranties extend to all defects discovered during the warranty period, but do not include damage caused by the Government. When a warranty for the entire item is not advisable, a warranty may be required for a particular aspect of the item that may require special protec-

tion (e.g., installation, components, accessories, subassemblies, preservation, packaging, and packing, etc.).

(ii) If the Government specifies the design of the end item and its measurements, tolerances, materials, tests, or inspection requirements, the contractor's obligations for correction of defects shall usually be limited to defects in material and workmanship or failure to conform to specifications. If the Government does not specify the design, the warranty extends also to the usefulness of the design.

(iii) If express warranties are included in a contract (except contracts for commercial items), all implied warranties of merchantability and fitness for a particular purpose shall be negated by the use of specific language in the clause (see clauses 52.246-17, Warranty of Supplies of a Noncomplex Nature; 52.246-18, Warranty of Supplies of a Complex Nature; and 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria).

(2) *Remedies.* (i) Normally, a warranty shall provide as a minimum that the Government may—

(A) Obtain an equitable adjustment of the contract, or

(B) Direct the contractor to repair or replace the defective items at the contractor's expense.

(ii) If it is not practical to direct the contractor to make the repair or replacement, or, because of the nature of the item, the repair or replacement does not afford an appropriate remedy to the Government, the warranty should provide alternate remedies, such as authorizing the Government to—

(A) Retain the defective item and reduce the contract price by an amount equitable under the circumstances; or

(B) Arrange for the repair or replacement of the defective item, by the Government or by another source, at the contractor's expense.

(iii) If it can be foreseen that it will not be practical to return an item to the contractor for repair, to remove it to an alternate source for repair, or to replace the defective item, the warranty should provide that the Government may repair, or require the contractor to repair, the item in place at the contractor's expense. The contract shall provide that in the circumstance where the Government is to accomplish the repair, the contractor will furnish at the place of delivery the material or parts, and the installation instructions required to successfully accomplish the repair.

(iv) Unless provided otherwise in the warranty, the contractor's obligation to repair or replace the defective item, or to agree to an equitable adjustment of the contract, shall include responsibility for the costs of furnishing all labor and material to—

(A) Reinspect items that the Government reasonably expected to be defective,

(B) Accomplish the required repair or replacement of defective items, and

(C) Test, inspect, package, pack, and mark repaired or replaced items.

(v) If repair or replacement of defective items is required, the contractor shall generally be required by the warranty to bear the expense of transportation for returning the defective item from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the contractor's plant and subsequent return. When defective items are returned to the contractor from other than the place of delivery specified in the contract, or when the Government exercises alternate remedies, the contractor's liability for transportation charges incurred 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 subsequent return.

(3) *Duration of the warranty.* The time period or duration of the warranty must be clearly specified and shall be established after consideration of such factors as (i) the estimated useful life of the item, (ii) the nature of the item including storage or shelf-life, and (iii) trade practice. The period specified shall not extend the contractor's liability for patent defects beyond a reasonable time after acceptance by the Government.

(4) *Notice.* The warranty shall specify a reasonable time for furnishing notice to the contractor regarding the discovery of defects. This notice period, which shall apply to all defects discovered during the warranty period, shall be long enough to assure that the Government has adequate time to give notice to the contractor. The contracting officer shall consider the following factors when establishing the notice period:

(i) The time necessary for the Government to discover the defects.

(ii) The time reasonably required for the Government to take necessary administrative steps and make a timely report of discovery of the defects to the contractor.

(iii) The time required to discover and report defective replacements.

(5) *Markings.* The packaging and preservation requirements of the contract shall require the contractor to stamp or mark the supplies delivered or otherwise furnish notice with the supplies of the existence of the warranty. The purpose of the markings or notice is to inform Government personnel who store, stock, or use the supplies that the supplies are under warranty. Markings may be brief but should include (i) a brief statement that a warranty exists, (ii) the substance of the warranty, (iii) its duration, and (iv) who to notify if the supplies are found to be defective. For commercial items (see 46.709), the contractor's trade practice in warranty marking is acceptable if sufficient information is presented for supply personnel and users to identify warranted supplies.

(6) *Consistency.* Contracting officers shall ensure that the warranty clause and any other warranty conditions in the contract (*e.g.*, in the specifications or an inspection clause) are consistent. To the extent practicable, all of the warranties to be contained in the contract should be expressed in the warranty clause.

46.707 Pricing aspects of fixed-price incentive contract warranties.

If a fixed-price incentive contract contains a warranty (see 46.708), the estimated cost of the warranty to the contractor should be considered in establishing the incentive target price and the ceiling price of the contract. All costs incurred, or estimated to be incurred, by the contractor in complying with the warranty shall be considered when establishing the total final price. Contractor compliance with the warranty after the establishment of the total final price shall be at no additional cost to the Government.

46.708 Warranties of data.

Warranties of data shall be developed and used in accordance with agency regulations.

46.709 Warranties of commercial items.

The contracting officer should take advantage of commercial warranties, including extended warranties, where appropriate and in the Government's best interests, offered by the contractor for the repair and replacement of commercial items (see Part 12).

46.710 Contract clauses.

The clauses and alternates prescribed in this section may be used in solicitations and contracts in which inclusion of a warranty is appropriate (see 46.709 for warranties for commercial items). However, because of the many situations that may influence the warranty terms and conditions appropriate to a particular acquisition, the contracting officer may vary the terms and conditions of the clauses and alternates to the extent necessary. The alternates prescribed in this section address the clauses; however, the conditions pertaining to each alternate must be considered if the terms and conditions are varied to meet a particular need.

(a)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-17, Warranty of Supplies of a Noncomplex Nature, in solicitations and contracts for noncomplex items when a fixed-price supply contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1)(i).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(3) If the supplies cannot be obtained from another source, the contracting officer may use the clause with its Alternate III.

(4) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate IV.

(5) If it is anticipated that recovery of the warranted items will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate V.

(b)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-18, Warranty of Supplies of a Complex Nature, in solicitations and contracts for deliverable complex items when a fixed-price supply or research and development contract is contemplated and the use of a warranty clause has been approved under agency procedures. If the contractor's design rather than the Government's design will be used, insert the word "design" before "material" in paragraph (b)(1).

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate II.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate III.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate IV.

(c)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, in solicitations and contracts when performance specifications or design are of major importance; a fixed-price supply, service, or research and development contract for systems and equipment is contemplated; and the use of a warranty clause has been approved under agency procedures.

(2) If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), the contracting officer may use the clause with its Alternate I.

(3) If a fixed-price incentive contract is contemplated, the contracting officer may use the clause with its Alternate II.

(4) If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, the contracting officer may use the clause with its Alternate III.

(d) The contracting officer may insert a clause substantially the same as the clause at 52.246-20, Warranty of Services, in solicitations and contracts for services when a fixed-price contract for services is contemplated and the use of warranty clause has been approved under agency procedures; unless a clause substantially the same as the clause at

52.246-19, Warranty of Systems and Equipment under Performance Specifications or Design Criteria, has been used.

(e)(1) The contracting officer may insert a clause substantially the same as the clause at 52.246-21, Warranty of Construction, in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated and the use of a warranty clause has been approved under agency procedures.

(2) If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may use the clause with its Alternate I.

Subpart 46.8—Contractor Liability for Loss of or Damage to Property of the Government

46.800 Scope of subpart.

This subpart prescribes policies and procedures for limiting contractor liability for loss of or damage to property of the Government that—

- (a) Occurs after acceptance and
- (b) Results from defects or deficiencies in the supplies delivered or services performed.

46.801 Applicability.

(a) This subpart applies to contracts other than those for (1) information technology, including telecommunications, (2) construction, (3) architect-engineer services, and (4) maintenance and rehabilitation of real property. This subpart does not apply to commercial items.

(b) See Subpart 46.7, Warranties, for policies and procedures concerning contractor liability caused by nonconforming technical data.

46.802 Definition.

“High-value item,” as used in this subpart, means a contract end item that—

- (1) Has a high unit cost (normally exceeding \$100,000 per unit), such as an aircraft, an aircraft engine, a communication system, a computer system, a missile, or a ship, and
- (2) Is designated by the contracting officer as a high-value item.

46.803 Policy.

(a) *General.* The Government will generally act as a self-insurer by relieving contractors, as specified in this subpart, of liability for loss of or damage to property of the Government that (1) occurs after acceptance of supplies delivered or services performed under a contract and (2) results from defects or deficiencies in the supplies or services. However, the Government will not relieve the contractor of liability for loss of or damage to the contract end item itself, except for high-value items.

(b) *High-value items.* In contracts requiring delivery of high-value items, the Government will relieve contractors of contractual liability for loss of or damage to those items. However, this relief shall not limit the Government’s rights arising under the contract to—

- (1) Have any defective item or its components corrected, repaired, or replaced when the defect or deficiency is discovered before the loss of or damage to a high-value item occurs; or
- (2) Obtain equitable relief when the defect or deficiency is discovered after such loss or damage occurs.

(c) *Exception.* The Government will not provide contractual relief under paragraphs (a) and (b) of this section when contractor liability can be preserved without increasing the contract price.

(d) *Limitations.* Subject to the specific terms of the limitation of liability clause included in the contract, the relief provided under paragraphs (a) and (b) of this section does not apply—

- (1) To the extent that contractor liability is expressly provided under a contract clause authorized by this regulation;
- (2) When a defect or deficiency in, or Government’s acceptance of, the supplies or services results from willful misconduct or lack of good faith on the part of the contractor’s managerial personnel; or
- (3) To the extent that any contractor insurance, or self-insurance reserve, covers liability for loss or damage suffered by the Government through purchase or use of the supplies delivered or services performed under the contract.

46.804 [Reserved]

46.805 Contract clauses.

(a) *Contracts that exceed the simplified acquisition threshold.* The contracting officer shall insert the appropriate clause or combination of clauses specified in paragraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:

- (1) In contracts requiring delivery of end items that are not high-value items, insert the clause at 52.246-23, Limitation of Liability.
- (2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.
- (3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (a)(1) and (a)(2) of this section, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.
- (4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.
- (5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in paragraph (a)(4) of this section and the appropriate clause or clauses prescribed in paragraph (a)(1), (2), or (3) of this section, and identify clearly in the contract schedule any high-value line items.

(b) *Acquisitions at or below the simplified acquisition threshold.* The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold. However, in response to a contractor's

specific request, the contracting officer may insert the clauses prescribed in paragraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold and may obtain any price reduction that is appropriate.

* * * * *

PART 47—TRANSPORTATION

Sec.

- 47.000 Scope of part.
 - 47.001 Definitions.
 - 47.002 Applicability.
- Subpart 47.1—General**
- 47.101 Policies.
 - 47.102 Transportation insurance.
 - 47.103 Transportation Documentation and Audit Regulation (TDA).
 - 47.104 Government rate tenders under section 10721 of the Interstate Commerce Act.
 - 47.104-1 Government freight.
 - 47.104-2 Fixed-price contracts.
 - 47.104-3 Cost-reimbursement contracts.
 - 47.104-4 Contract clauses.
 - 47.104-5 Citation of Government rate tenders.
 - 47.105 [Reserved]
- Subpart 47.2—Contracts for Transportation or for Transportation-Related Services**
- 47.200 Scope of subpart.
 - 47.201 Definitions.
 - 47.202 Presolicitation planning.
 - 47.203 Transportation term contracts.
 - 47.204 Single-movement contracts.
 - 47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.
 - 47.206 Preparation of solicitations and contracts.
 - 47.207 Solicitation provisions, contract clauses, and special requirements.
 - 47.207-1 Qualifications of offerors.
 - 47.207-2 Duration of contract and time of performance.
 - 47.207-3 Description of shipment, origin, and destination.
 - 47.207-4 Determination of weights.
 - 47.207-5 Contractor responsibilities.
 - 47.207-6 Rates and charges.
 - 47.207-7 Liability and insurance.
 - 47.207-8 Government responsibilities.
 - 47.207-9 Annotation and distribution of shipping and billing documents.
- Subpart 47.3—Transportation in Supply Contracts**
- 47.300 Scope of subpart.
 - 47.301 General.
 - 47.301-1 Responsibilities of contracting officers.
 - 47.301-2 Participation of transportation officers.
 - 47.301-3 Using the Defense Transportation System (DTS).
 - 47.302 Place of delivery—f.o.b. point.
 - 47.303 Standard delivery terms and contract clauses.
 - 47.303-1 F.o.b. origin.
 - 47.303-2 F.o.b. origin, contractor's facility.
 - 47.303-3 F.o.b. origin, freight allowed.
 - 47.303-4 F.o.b. origin, freight prepaid.
 - 47.303-5 F.o.b. origin, with differentials.
 - 47.303-6 F.o.b. destination.
 - 47.303-7 F.o.b. destination, within consignee's premises.
 - 47.303-8 F.a.s. vessel, port of shipment.
 - 47.303-9 F.o.b. vessel, port of shipment.
 - 47.303-10 F.o.b. inland carrier, point of exportation.
 - 47.303-11 F.o.b. inland point, country of importation.
 - 47.303-12 Ex dock, pier, or warehouse, port of importation.
 - 47.303-13 C. & f. destination.
 - 47.303-14 C.i.f. destination.
 - 47.303-15 F.o.b. designated air carrier's terminal, point of exportation.
 - 47.303-16 F.o.b. designated air carrier's terminal, point of importation.
 - 47.303-17 Contractor-prepaid commercial bills of lading, small package shipments.
 - 47.304 Determination of delivery terms.
 - 47.304-1 General.
 - 47.304-2 Shipments within CONUS.
 - 47.304-3 Shipments from CONUS for overseas delivery.
 - 47.304-4 Shipments originating outside CONUS.
 - 47.304-5 Exceptions.
 - 47.305 Solicitation provisions, contract clauses, and transportation factors.
 - 47.305-1 Solicitation requirements.
 - 47.305-2 Solicitations f.o.b. origin and f.o.b. destination—lowest overall cost.
 - 47.305-3 F.o.b. origin solicitations.
 - 47.305-4 F.o.b. destination solicitations.
 - 47.305-5 Destination unknown.
 - 47.305-6 Shipments to ports and air terminals.
 - 47.305-7 Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.
 - 47.305-8 Consolidation of small shipments and the use of stopoff privileges.
 - 47.305-9 Commodity description and freight classification.
 - 47.305-10 Packing, marking, and consignment instructions.
 - 47.305-11 Options in shipment and delivery.
 - 47.305-12 Delivery of Government-furnished property.
 - 47.305-13 Transit arrangements.
 - 47.305-14 Mode of transportation.
 - 47.305-15 Loading responsibilities of contractors.
 - 47.305-16 Shipping characteristics.
 - 47.305-17 Returnable cylinders.
 - 47.306 Transportation factors in the evaluation of offers.
 - 47.306-1 Transportation cost determinations.
 - 47.306-2 Lowest overall transportation costs.
 - 47.306-3 Adequacy of loading and unloading facilities.

Subpart 47.4—Air Transportation by U.S.-Flag Carriers		47.405	Contract clause.
47.401	Definitions.	Subpart 47.5—Ocean Transportation by U.S.-Flag Vessels	
47.402	Policy.	47.500	Scope of subpart.
47.403	Guidelines for implementation of the Fly America Act.	47.501	Definitions.
47.403-1	Availability and unavailability of U.S.-flag air carrier service.	47.502	Policy.
47.403-2	Air transport agreements between the United States and foreign governments.	47.503	Applicability.
47.403-3	Disallowance of expenditures.	47.504	Exceptions.
47.404	Air freight forwarders.	47.505	Construction contracts.
		47.506	Procedures.
		47.507	Contract clauses.

47.000 Scope of part.

(a) This part prescribes policies and procedures for—

(1) Applying transportation and traffic management considerations in the acquisition of supplies; and

(2) Acquiring transportation or transportation-related services by contract methods other than bills of lading, transportation requests, transportation warrants, and similar transportation forms. Even though the MMAR does not regulate the acquisition of transportation or transportation-related services when the bill of lading is the contract, this contract method is widely used and, therefore, relevant guidance on the use of the bill of lading, particularly the Government bill of lading (GBL), is provided in this part.

(b) The definitions in this part have been condensed from statutory definitions. In case of inconsistency between the language of this part and the statutory requirements, the statute shall prevail.

47.001 Definitions.

As used in this part—

“Carrier” or “commercial carrier” means a common carrier or a contract carrier.

“Common carrier” means a person holding itself out to the general public to provide transportation for compensation.

“Contract carrier” means a person providing transportation for compensation under continuing agreements with one person or a limited number of persons.

“CONUS” or “Continental United States” means the 48 contiguous states and the District of Columbia.

47.002 Applicability.

(a) All Government personnel concerned with the activities listed in paragraphs (a)(1) through (a)(4) of this section shall follow the regulations in Part 47 as applicable:

(1) Acquisition of supplies.

(2) Acquisition of transportation and transportation-related services.

(3) Transportation assistance and traffic management.

(4) The making and administration of contracts under which payments are made from Government funds for—

(i) The transportation of supplies;

(ii) Transportation-related services; or

(iii) Transportation of contractor personnel and their personal belongings.

(b) Subpart 42.14, Traffic and Transportation Management, shall be used for administering transportation contracts, transportation-related contracts, and those portions of supply and other contracts that involve transportation.

Subpart 47.1—General**47.101 Policies.**

(a) The contracting officer shall obtain traffic management advice and assistance (see 47.105) in the consideration of transportation factors required for—

(1) Solicitations and awards;

(2) Contract administration, modification, and termination; and

(3) Transportation of property by the Government to and from contractors' plants.

(b)(1) The preferred method of transporting supplies for the Government is by commercial carriers. However, Government-owned, leased, or chartered vehicles, aircraft, and vessels may be used if—

(i) They are available and not fully utilized;

(ii) Their use will result in substantial economies; and

(iii) Their use is in accordance with all applicable statutes, agency policies and regulations.

(2) If the three circumstances listed in paragraph (b)(1) of this section apply, Government vehicles may be used for purposes such as—

(i) Local transportation of supplies between Government installations;

(ii) Pickup and delivery services that commercial carriers do not perform in connection with line-haul transportation;

(iii) Transportation of supplies to meet emergencies; and

(iv) Accomplishment of program objectives that cannot be attained by using commercial carriers.

(c) MMS shall not accord preferential treatment to any mode of transportation or to any particular carrier either in awarding or administering contracts for the acquisition of supplies or in awarding contracts for the acquisition of transportation. (See Subparts 47.2 and 47.3 for situations in which the contracting officer is permitted to use specific modes of transportation.)

(d) MMS shall comply with the Fly America Act, the Cargo Preference Act, and related statutes as prescribed in Subparts 47.4, Air Transportation by U.S.-Flag Carriers, and 47.5, Ocean Transportation by U.S.-Flag Vessels.

47.102 Transportation insurance.

(a) The Government generally—

(1) Retains the risk of loss of and/or damage to its property that is not the legal liability of commercial carriers and

(2) Does not buy insurance coverage for its property in the possession of commercial carriers (40 U.S.C. 726). (See Part 28, Bonds and Insurance.)

(b) Under special circumstances the Government may, if such action is considered necessary and in the Government's

interest, (1) buy insurance coverage for Government property or (2) require the carrier to (i) assume full responsibility for loss of or damage to the Government property in its possession and (ii) buy insurance to cover the carrier's assumed responsibility. The cost of this insurance to the carrier shall be part of the transportation cost. (The Secretary of the Treasury prescribes regulations regarding shipments of valuables in 31 CFR 261 and 262.)

(c)(1) If special circumstances dictate the need for the Government to buy insurance coverage, the contracting officer shall ascertain that—

- (i) There is no statutory prohibition; and
- (ii) Funds for insurance are available.

(2) The contracting officer shall document the need and authorization for insurance coverage in the contract file.

47.103 Transportation Documentation and Audit Regulation (TDA).

(a) The United States Government bill of lading (GBL) generally shall be used for the transportation of property of the United States for which the Government pays the transportation charges directly to commercial carriers.

(b) Regulations and procedures governing the GBL, documentation, payment, and audit of transportation services acquired by the United States Government are prescribed in 41 CFR 101-41, Transportation Documentation and Audit. Included in this regulation, among others, is the limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed \$100.

(c) Subsection 42.1403-2 prescribes regulations and procedures for the occasional use of contractor-prepaid commercial bills of lading for the transportation of supplies weighing not more than 1,000 pounds that are acquired by the Government on f.o.b. origin terms.

47.104 Government rate tenders under section 10721 of the Interstate Commerce Act.

47.104-1 Government freight.

(a) Common carriers subject to the jurisdiction of the Interstate Commerce Commission may under the provisions of 49 U.S.C. 10721 offer to transport persons or property for the account of the United States without charge or at reduced rates.

(b) Section 10721 rates are published in Government rate tenders and apply to shipments moving for the account of the Government; *i.e.*, on—

- (1) Government bills of lading;

- (2) Commercial bills of lading endorsed to show that such bills of lading are to be exchanged for, or converted to, Government bills of lading at destination after delivery to the consignees; or

- (3) Commercial bills of lading endorsed to show that total transportation charges are assignable to, and will be reimbursed by, the Government (see the clause at 52.247-1, Commercial Bill of Lading Notations).

(c) Government agencies may negotiate with carriers for additional or revised section 10721 rates in appropriate situations. Only qualified transportation officers shall carry out these negotiations. (See 47.105 for transportation assistance.) The following are examples of situations in which negotiations for additional or revised section 10721 rates may be appropriate:

- (1) Volume movements are expected.

- (2) Shipments will be made on a recurring basis between designated places, and substantial savings in transportation costs appear possible even though a volume movement is not involved.

- (3) Transit arrangements are feasible and advantageous to the Government.

47.104-2 Fixed-price contracts.

(a) *F.o.b. destination.* Section 10721 quotations do not apply to shipments under fixed-price f.o.b. destination contracts (delivered price).

(b) *F.o.b. origin.* Under fixed-price f.o.b. origin contracts, shipments normally shall be made on GBL's. However, if it is advantageous to the Government, the contracting officer may occasionally require the contractor to prepay the freight charges to a specific destination. In such cases, the contractor shall use a commercial bill of lading and be reimbursed for the direct and actual transportation cost as a separate item in the invoice. The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government in this type of arrangement obtains the benefit of section 10721 rates.

47.104-3 Cost-reimbursement contracts.

(a) The Interstate Commerce Commission has ruled that section 10721 rates may be applied to shipments other than those made by the Government if the total benefit accrues to the Government; *i.e.*, the Government must pay the charges or directly and completely reimburse the party that initially bears the freight charges. Therefore, section 10721 rates may be used for shipments moving on commercial bills of lading in cost-reimbursement contracts under which the transportation costs are direct and allowable costs under the cost principles of Part 31.

(b) Section 10721 rates may be applied to the movement of household goods and personal effects of contractor employees who are relocated for the convenience and at the

direction of the Government and whose total transportation costs are reimbursed by the Government.

(c) The clause at 52.247-1, Commercial Bill of Lading Notations, will ensure that the Government receives the benefit of lower section 10721 rates in cost-reimbursement contracts as described in paragraphs (a) and (b) of this section.

(d) Contracting officers shall—

(1) Include in contracts a statement requiring the contractor to use carriers that offer acceptable service at reduced rates if available; and

(2) Ensure that contractors receive the name and location of the transportation officer designated to furnish support and guidance when using Government rate tenders under 47.104-5(b).

(e) Transportation officers shall—

(1) Advise and assist contracting officers and contractors; and

(2) Make available to contractors the names of carriers that provide service under section 10721 quotations, cite applicable rate tenders, and advise contractors of the statement that must be shown on the carrier's commercial bill of lading (see the clause at 52.247-1, Commercial Bill of Lading Notations).

47.104-4 Contract clauses.

(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—

(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or

(2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold) (see 47.104-2(b) and 47.104-3).

(b) The contracting officer may insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold when it is contemplated that the delivery terms will be f.o.b. origin.

(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract.

47.104-5 Citation of Government rate tenders.

When section 10721 rates apply, transportation officers or contractors, as appropriate, shall identify the applicable Government rate tender by endorsement on bills of lading, including—

(a) GBL's or commercial bills of lading to be converted to GBL's (see 41 CFR 101-41.303, Conversion of commercial bills of lading to GBL's); and

(b) Properly endorsed commercial bills of lading when transportation charges are reimbursable (see 47.104-2(b) and 47.104-3).

47.105 [Reserved]

Subpart 47.2—Contracts for Transportation or for Transportation-Related Services

47.200 Scope of subpart.

(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—

(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and

(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.

(b) Except as provided in paragraph (c) of this section, this subpart does not apply to—

(1) The acquisition of freight transportation from—

(i) Domestic or international air carriers; and

(ii) International ocean carriers (see Subparts 47.4 and 47.5);

(2) Freight transportation acquired by bills of lading;

(3) Freight transportation for which rates are negotiated under (b)(1); or

(4) Contracts at or below the simplified acquisition threshold.

(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in paragraph (b)(1) of this section and passenger transportation from any carrier or mode.

(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7); or

(2) By U.S. Government bill of lading (GBL).

47.201 Definitions.

As used in this subpart—

“General freight” means supplies, goods, and transportable property not encompassed in the definitions of “household goods” or “office furniture.”

“Household goods” means personal property that belongs to a person and that person’s immediate family and includes, but is not limited to household furnishings, equipment and appliances, furniture, clothing, books, and similar property (see 41 CFR 101-7).

“Office furniture” means furniture, equipment, fixtures, records, and other equipment and materials used in Government offices, hospitals, and similar establishments.

47.202 Presolicitation planning.

Contracting officers shall inform activities that plan to acquire transportation or transportation-related services of the applicable lead-time requirements, that is—

(a) The Service Contract Act of 1965 (SCA) requirement for submission of Standard Form 98, Notice of Intention to Make a Service Contract and Response to Notice, to the Department of Labor not less than the number of days prescribed by the Department of Labor before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding \$2,500 that may be subject to the SCA (see Subpart 22.10);

(b) The possible requirement to provide, during the solicitation period, time for prospective offerors or contractors to inspect origin and destination locations; or

(c) The possible requirement for inspection by agency personnel of prospective contractor facilities and equipment.

47.203 Transportation term contracts.

(a) Transportation term contracts are indefinite delivery requirements contracts for transportation or for transportation-related services. They are particularly useful for local drayage and office relocations within a metropolitan area.

(b) Transportation term contracts shall contain descriptions of the services to be performed; rates and charges for these services; the geographical area of coverage; the term of the contract; and minimum or maximum order limitations by dollar amount, shipment size, or other criteria.

(c) If appropriate, the transportation term contract shall require the contractor to provide the services covered to any Government agency that issues an order for these services under the contract. If so—

(1) MMS may place orders for transportation or for transportation-related services under existing term contracts without further consideration of competition, as these term contracts are awarded on a price-competitive basis; and

(2) MMS personnel shall ensure that the orders they place conform to the contract, including any minimum or maximum order limitations.

(d) Policies and procedures regarding the use of GSA term contracts for transportation or for transportation-related services by civilian executive agencies are prescribed in 41 CFR 101-40.109.

47.204 Single-movement contracts.

Single-movement contracts may be awarded for unique transportation services that are not otherwise available under carrier tariffs or covered by DOD or GSA contracts; *e.g.*, special requirements at origin and/or destination.

47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) MMS may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).

(b) MMS may obtain transportation or transportation-related services for which the cost does not exceed the simplified acquisition threshold if term contracts or basic ordering agreements are not available.

47.206 Preparation of solicitations and contracts.

(a) Contracting officers shall prepare solicitations and contracts for transportation or for transportation-related services as prescribed elsewhere in the MMAR for fixed-price service contracts to the extent that those requirements are applicable and not inconsistent with the requirements in Subpart 47.2.

(b) In addition, the contracting officer shall include in solicitations and contracts for transportation or for transportation-related services provisions, clauses, and instructions as prescribed in section 47.207.

47.207 Solicitation provisions, contract clauses, and special requirements.

The contracting officer shall include provisions, clauses, and special requirements in solicitations and contracts for transportation or for transportation-related services as prescribed in 47.207-1 through 47.207-9.

47.207-1 Qualifications of offerors.

(a) *Operating authorities.* The contracting officer shall insert the clause at 52.247-2, Permits, Authorities, or Franchises, when regulated transportation is involved. The clause need not be used when a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirement for holding or obtaining State authority to operate within the State.

(b) *Performance capability for Federal office moving contracts.* (1) The contracting officer shall insert the clause at 52.247-3, Capability to Perform a Contract for the Relocation of a Federal Office, when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices.

(2) If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or commercial zone, the contracting officer shall use the clause with its Alternate I.

(c) *Inspection of shipping and receiving facilities.* The contracting officer shall insert the provision at 52.247-4, Inspection of Shipping and Receiving Facilities, when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids.

(d) *Familiarization with conditions.* The contracting officer shall insert the clause at 52.247-5, Familiarization with Conditions, to ensure that offerors become familiar with conditions under which and where the services will be performed.

(e) *Financial statement.* The contracting officer shall insert the provision at 52.247-6, Financial Statement, to ensure that offerors are prepared to furnish financial statements.

47.207-2 Duration of contract and time of performance.

The contracting officer shall—

(a) Establish a specific expiration date (month, day, and year) for the contract or state the length of time that the contract will remain in effect; *e.g.*, 6 months commencing from the date of award; and

(b) Include the following items as appropriate:

(1) A statement of the time period during which the service is required when the service is a one-time job; *e.g.*, a routine office relocation.

(2) A time schedule for the performance of segments of a major job; *e.g.*, an office relocation for which the work phases must be coordinated to meet other needs of the agency.

(3) Statements of performance times for particular services; *e.g.*, pickup and delivery services. Specify—

(i) On which days of the week and during which hours of the day pickup and delivery services may be required;

(ii) The maximum time allowable to the contractor for accomplishing delivery under regular or priority service; and

(iii) How much advance notice the contractor will be given for regular pickup services and, if applicable, priority pickup services.

47.207-3 Description of shipment, origin, and destination.

(a) *Origin of shipments.* The contracting officer shall include in solicitations full details regarding the location from which the freight is to be shipped. For example, if a single location is shown, furnish the shipper's name, street address, city, State, and ZIP code. If several or indefinite locations are involved, as in the case of multiple shippers or drayage contracts, describe the area of origin including boundaries and ZIP codes.

(b) *Destination of shipments.* The contracting officer shall include full details regarding delivery points. For example, if a single delivery point is shown, furnish the consignee's name, street address, city, State, and ZIP code. If several or indefinite delivery points are involved, describe the delivery area, including boundaries and ZIP codes.

(c) *Description of the freight.* The contracting officer shall include in solicitations—

(1) An inventory if the freight consists of nonbulk items; and

(2) The freight classification description, which should be obtained from the transportation office. If a freight classification description is not available, use a clear nontechnical description. Include additional details necessary to ensure that the prospective offerors have complete information about the freight; *e.g.*, size, weight, hazardous material, whether packed for export, or unusual value.

(d) *Exclusion of freight.* The contracting officer shall—

(1) Clearly identify any freight or types of shipments that are subject to exclusion; *e.g.*, bulk freight, hazardous commodities, or shipments under or over specified weights; and

(2) Insert a clause substantially the same as the clause at 52.247-7, Freight Excluded, when any commodities or types of shipments have been identified for exclusion.

(e) *Quantity.* (1) The contracting officer shall state the actual weight of the freight or a reasonably accurate estimate. The following are examples:

(i) If the contract covers transportation services required over an extended period of time, include a schedule of actual or estimated tonnage or number of items to be transported per week, month, or other time period.

(ii) If the contract covers a group movement of household goods, give an estimate of the aggregate weights and the basis for determining the aggregate weight.

(2) The contracting officer shall insert the clause at 52.247-8, Estimated Weights or Quantities Not Guaranteed, when weights or quantities are estimates.

47.207-4 Determination of weights.

The contracting officer shall specify in the contract the method of determining the weights of shipments as appropri-

ate for the kind of freight involved and the type of service required.

(a) *Shipments of freight other than household goods and office furniture.* (1) The contracting officer shall insert the clause at 52.247-9, Agreed Weight—General Freight, when the shipping activity determines the weight of shipments of freight other than office furniture.

(2) The contracting officer shall insert the clause at 52.247-10, Net Weight—General Freight, when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments.

(b) *Shipments of household goods or office furniture.* The contracting officer shall insert the clause at 52.247-11, Net Weight—Household Goods or Office Furniture, when movements of Government employees' household goods or relocations of Government offices are involved.

47.207-5 Contractor responsibilities.

Contractor responsibilities vary with the kinds of freight to be shipped and services required. The contracting officer shall specify clearly those service requirements that are not considered normal transportation or transportation-related requirements.

(a) *Type of equipment.* If appropriate, the contracting officer shall specify the type and size of equipment to be furnished by the contractor. Otherwise, state that the contractor shall furnish clean and sound closed-type equipment of sufficient size to accommodate the shipment.

(b) *Supervision, labor, or materials.* The contracting officer shall insert a clause substantially the same as the clause at 52.247-12, Supervision, Labor, or Materials, when the contractor is required to furnish supervision, labor, or materials.

(c) *Accessorial services—moving contracts.* The contracting officer shall insert a clause substantially the same as the clause at 52.247-13, Accessorial Services—Moving Contracts, in contracts for the transportation of household goods or office furniture.

(d) *Receipt of shipment.* The contracting officer shall insert the clause at 52.247-14, Contractor Responsibility for Receipt of Shipment.

(e) *Loading and unloading.* The contracting officer shall insert the clause at 52.247-15, Contractor Responsibility for Loading and Unloading, when the contractor is responsible for loading and unloading shipments.

(f) *Return of undelivered freight.* The contracting officer shall insert the clause at 52.247-16, Contractor Responsibility for Returning Undelivered Freight, when the contractor is responsible for returning undelivered freight.

47.207-6 Rates and charges.

(a)(1) The contracting officer shall include in the solicitation a statement that the charges in the contract shall not exceed the contractor's charges for the same service that is—

- (i) Available to the general public; or
- (ii) Otherwise tendered to the Government.

(2) The contracting officer shall insert the clause at 52.247-17, Charges.

(b) The contracting officer shall include in the solicitation a tabulation listing each required service and the basis for the rate (price); *e.g.*, “unit of weight” or “per work-hour,” leaving sufficient space for offerors to insert the rates offered for each service.

(c) The following guidelines apply to the composition of a tabulation of transportation or of transportation-related services and their rate (price) bases:

(1) *Combination of pricing bases.* If various types of services with different bases for assessing charges are required under the same contract, show each service separately and the applicable basis for that service.

(2) *Hourly rate basis.* If charges are based on an hourly rate, state the method for charging for fractions of an hour; *e.g.*—

- (i) A period of 30 minutes or less is charged at one-half the hourly rate; and
- (ii) The hourly rate applies to any portion of an hour that exceeds 30 minutes.

(3) *Shipments of varying weights.* If charges are based on weight and shipments will vary in weight, request rates on a graduated weight basis. Include a table of graduated weights for offerors to insert rates.

(4) *Multiple origins and/or destinations.* Specify whether rates are requested for each origin and/or each destination or for specific groups of origins and/or destinations.

(5) *Multiple shipments from one origin.* If multiple shipments will be tendered at one time to the contractor for delivery to two or more consignees at the same destination, request the rate applicable to the aggregate weight. If such shipments are for delivery to various destinations along the route between origin and last destination, request the rate applicable to the aggregate weight and a stopoff charge for each intermediate destination.

(i) The contracting officer shall insert the clause at 52.247-18, Multiple Shipments, when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination.

(ii) The contracting officer shall insert the clause at 52.247-19, Stopping in Transit for Partial Unloading, when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination.

(6) *Estimated quantities or weights.* The contracting officer shall insert in solicitations the provision at 52.247-20, Estimated Quantities or Weights for Evaluation of Offers, when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair.

(7) *Additional services.* If services in addition to those covered in the basic rate are anticipated; *e.g.*, inside delivery, state the conditions under which payment will be made for those services.

47.207-7 Liability and insurance.

(a) The contracting officer shall specify—

(1) The contractor's liability for injury to persons or damage to property other than the freight being transported;

(2) The contractor's liability for loss of and/or damage to the freight being transported; and

(3) The amount of insurance the contractor is required to maintain.

(b) When the contractor's liability for loss of and/or damage to the freight being transported is not specified, the usual measure of liability as prescribed in section 11707 of the Interstate Commerce Act (49 U.S.C. 11707) applies.

(c) The contracting officer shall insert the clause at 52.247-21, Contractor Liability for Personal Injury and/or Property Damage.

(d) The contracting officer shall insert the clause at 52.247-22, Contractor Liability for Loss of and/or Damage to Freight other than Household Goods, in solicitations and contracts for the transportation of freight other than household goods.

(e) The contracting officer shall insert the clause at 52.247-23, Contractor Liability for Loss of and/or Damage to Household Goods, in solicitations and contracts for the transportation of household goods, including the rate per pound appropriate to the situation.

(f) When freight is not shipped under rates subject to released or declared value, see 28.313(a) and the clause at 52.228-9, Cargo Insurance.

(g) When the contracting officer determines that vehicular liability and/or general public liability insurance required by law are not sufficient for a contract, see 28.313(b) and the clause at 52.228-10, Vehicular and General Public Liability Insurance.

47.207-8 Government responsibilities.

(a) The contracting officer shall state clearly the Government's responsibilities that have a direct bearing on the contractor's performance under the contract; *e.g.*, the Government's responsibility to notify the contractor in advance when hazardous materials are included in a shipment.

(1) *Advance notification.* The contracting officer shall insert the clause at 52.247-24, Advance Notification by the Government, when the Government is responsible for notifying the contractor of specific service times or unusual shipments.

(2) *Government equipment with or without operators.*

(i) The contracting officer shall insert the clause at 52.247-25, Government-Furnished Equipment With or Without Operators, when the Government furnishes equipment with or without operators.

(ii) Insert the kind of equipment and the locations where the equipment will be furnished.

(3) *Direction and marking.* The contracting officer shall insert the clause at 52.247-26, Government Direction and Marking, when office relocations are involved.

(b) The contracting officer shall insert the clause at 52.247-27, Contract Not Affected by Oral Agreement.

47.207-9 Annotation and distribution of shipping and billing documents.

(a) The contracting officer shall state in detail the responsibilities of the contractor, the contracting agency, and, if appropriate, the consignee for the annotation and distribution of shipping and billing documents. See 41 CFR 101-41, Transportation Documentation and Audit (TDA).

(b) In instances of mass movements of freight made available to the contractor at one time, it is particularly important that the contracting officer specifies that bills of lading be cross-referenced so that the Government benefits from applicable volume rates.

(c) The contracting officer shall insert the clause at 52.247-28, Contractor's Invoices, in drayage or other term contracts.

Subpart 47.3—Transportation in Supply Contracts

47.300 Scope of subpart.

(a) This subpart prescribes policies and procedures for the application of transportation and traffic management considerations in the acquisition of supplies. The terms and conditions contained in this subpart are applicable to fixed-price contracts.

(b) If a special requirement exists for application of any of these terms and conditions to other types of contracts; *e.g.*, cost-reimbursement contracts, for which transportation arrangements are normally the responsibility of the contractor and transportation costs are allowable (see 31.205-45), the contracting officer shall use the terms and conditions prescribed in this subpart as a guide for—

- (1) Contract coverage of transportation; and
- (2) Instructions to the contractor to minimize the ultimate transportation costs to the Government.

47.301 General.

(a) Transportation and traffic management factors are important in awarding and administering contracts to ensure that (1) acquisitions are made on the basis most advantageous to the Government and (2) supplies arrive in good order and condition and on time at the required place. (See 47.104 for possible reduced transportation rates for Government shipments.)

(b) The requiring activity shall—

- (1) Consider all transportation factors including present and future requirements, positioning of supplies, and subsequent distribution to the extent known or ascertainable; and
- (2) Provide the contracting office with information and instructions reflecting transportation factors applicable to the particular acquisition.

47.301-1 Responsibilities of contracting officers.

(a) Contracting officers shall obtain from traffic management offices transportation factors required for—

- (1) Solicitations and awards; and
- (2) Contract administration, modification, and termination, including the movement of property by the Government to and from contractors' plants.

(b) Contracting officers shall request transportation office participation especially before making an initial acquisition of supplies that are unusually large, heavy, high, wide, or long; have sensitive or dangerous characteristics; or lend themselves to containerized movements from the source. In determining total transportation charges, contracting officers shall also consider additional costs arising from factors such as the use of special equipment, excess blocking and bracing material, or circuitous routing.

47.301-2 Participation of transportation officers.

GPO's transportation officers shall participate in the solicitation and evaluation of offers to ensure that all necessary transportation factors, such as transportation costs, transit arrangements, time in transit, and port capabilities, are considered and result in solicitations and contracts advantageous to the Government. Transportation officers shall provide traffic management assistance throughout the acquisition cycle (see 47.105, Transportation assistance).

47.301-3 Using the Defense Transportation System (DTS).

(a) All military and civilian agencies shipping, or arranging for the acquisition and shipment by Government contractors, through the use of military-controlled transport or through military transshipment facilities shall follow Department of Defense (DOD) Regulation 4500.32-R, Military Standard Transportation and Movement Procedures (MILSTAMP). MILSTAMP establishes uniform procedures and documents for the generation, documentation, communication, and use of transportation information, thus providing the capability for control of shipments moving in the DTS. MILSTAMP has been implemented on a worldwide basis.

(b) Contracting activities are responsible for (1) ensuring that the requirements of the MILSTAMP regulation are included in appropriate contracts for all applicable shipments and (2) enforcing these requirements with regard to shipments under their control. This includes requirements relating to documentation, marking, advance notification of shipment dates, and terminal clearances.

(c) Contractual documents shall designate a contract administration office (see 42.202(a)) as the contact point to which the contractor will provide necessary information to—

(1) Effect MILSTAMP documentation and movement control, including air or water terminal shipment clearances; and

(2) Obtain data necessary for shipment marking and freight routing. Contractual documents shall specify that the contractor shall not ship directly to a military air or water port terminal without authorization from the designated contract administration office (see 47.305-6(f)).

47.302 Place of delivery—f.o.b. point.

(a) The policies and procedures in 47.304-1, -2, and -3 govern the transportation of supplies from sources in the Continental United States (CONUS), except when identifiable costs, nature of the supplies (security, safety, or value), delivery requirements (premium modes of transport, escorts, transit arrangements, and tentative conditions), or other advantages, limitations, or requirements dictate otherwise. The policies and procedures in 47.304-4 govern the transportation of supplies from sources outside CONUS.

(b) Generally, the contracting officer shall solicit offers, and award contracts, with delivery terms on the basis prescribed in 47.304. The contracting officer shall document the contract file (see 4.801) with justifications for solicitations that do not specify delivery on the basis prescribed in 47.304.

(c)(1) The place of performance of Government acquisition quality assurance actions and the place of acceptance shall not control the delivery term, except that if acceptance is at destination, transportation shall be f.o.b. destination (see 47.304-1(f)).

(2) The fact that transportation is f.o.b. destination does not alone necessitate changing the place of acceptance from origin to destination; and the fact that acceptance is at origin does not necessitate an f.o.b. origin delivery term. Providing for inspection and acceptance at origin (if appropriate under 46.402), in conjunction with an f.o.b. destination term, may be advantageous to both the Government and the contractor. Acceptance of title at origin by the Government permits payment of the contractor, provided the invoice is supported either by a copy of the signed commercial bill of lading (indicating the carrier's receipt of the supplies covered by the invoice for transportation to the particular destination specified in the contract) or by other appropriate evidence of shipment to the particular destination for the contractor's account.

47.303 Standard delivery terms and contract clauses.

Standard delivery terms are listed in 47.303-1 through 47.303-16 (but see 47.300 regarding applicability to cost reimbursement contracts).

47.303-1 F.o.b. origin.

(a) *Explanation of delivery term.* "F.o.b. origin" means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier's wharf (at shipside, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048).

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking;

or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*—

(A) "To be converted to a Government bill of lading," or

(B) "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-29, F.o.b. Origin, when the delivery term is f.o.b. origin.

47.303-2 F.o.b. origin, contractor's facility.

(a) *Explanation of delivery term.* "F.o.b. origin, contractor's facility" means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-30, F.o.b. Origin, Contractor's Facility, when the delivery term is f.o.b. origin, contractor's facility.

47.303-3 F.o.b. origin, freight allowed.

(a) *Explanation of delivery term.* "F.o.b. origin, freight allowed" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type or conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at ship-side, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-31, F.o.b. Origin, Freight Allowed, when the delivery term is f.o.b. origin, freight allowed.

47.303-4 F.o.b. origin, freight prepaid.

(a) *Explanation of delivery term.* "F.o.b. origin, freight prepaid" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service

(as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at ship-side, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) The cost of transportation, ultimately the Government's obligation, is prepaid by the contractor to the point specified in the contract.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b), except that the contractor shall prepare commercial bills of lading or other transportation receipts and shall prepay all freight charges to the extent specified in the contract.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-32, F.o.b. Origin, Freight Prepaid, when the delivery term is f.o.b. origin, freight prepaid.

47.303-5 F.o.b. origin, with differentials.

(a) *Explanation of delivery term.* "F.o.b. origin, with differentials" means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at ship-side, within reach of the ship's loading tackle, when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by the Interstate Commerce Commission at 49 CFR 1048); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in contractor's offer may be added to the contract price.

(b) *Contractor responsibilities.* The contractor's responsibilities are the same as those listed in 47.303-1(b). (c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-33, F.o.b. Origin, with Differentials, when it is likely that offerors may include in f.o.b. ori-

gin offers a contingency to compensate for unfavorable routing conditions by the Government at the time of shipment.

47.303-6 F.o.b. destination.

(a) *Explanation of delivery term.* “F.o.b. destination” means—

(1) Free of expense to the Government delivered, on board the carrier’s conveyance, at a specified delivery point where the consignee’s facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee’s wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or “constructive placement” as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including “piggyback”) is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for “heavy or bulky freight.” When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarder for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery when required, if transfer to truck is required to complete delivery to consignee.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-34, F.o.b. Destination, when the delivery term is f.o.b. destination.

47.303-7 F.o.b. destination, within consignee’s premises.

(a) *Explanation of delivery term.* “F.o.b. destination, within consignee’s premises” means free of expense to the Government delivered and laid down within the doors of the consignee’s premises, including delivery to specific rooms within a building if so specified.

(b) *Contractor responsibilities.* The contractor’s responsibilities are the same as those listed in 47.303-6(b).

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-35, F.o.b. Destination, within Consignee’s Premises, when the delivery term is f.o.b. destination, within consignee’s premises.

47.303-8 F.a.s. vessel, port of shipment.

(a) *Explanation of delivery term.* “F.a.s. vessel, port of shipment” means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship’s receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government’s request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-36, F.a.s. Vessel, Port of Shipment, when the delivery term is f.a.s. vessel, port of shipment.

47.303-9 F.o.b. vessel, port of shipment.

(a) *Explanation of delivery term.* “F.o.b. vessel, port shipment” means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-37, F.o.b. Vessel, Port of Shipment, when the delivery term is f.o.b. vessel, port of shipment.

47.303-10 F.o.b. inland carrier, point of exportation.

(a) *Explanation of delivery term.* "F.o.b. inland carrier, point of exportation" means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3)(i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-38, F.o.b. Inland Carrier, Point of Exportation, when the delivery term is f.o.b. inland carrier, point of exportation.

47.303-11 F.o.b. inland point, country of importation.

(a) *Explanation of delivery term.* "F.o.b. inland point, country of importation" means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee's facility is located.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2)(i) Deliver, in or on the inland carrier's conveyance, the shipment in good order and condition to the specified inland point where the consignee's facility is located;

(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export, import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and

(3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier's conveyance at the specified inland point.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-39, F.o.b. Inland Point, Country of Importation, when the delivery term is f.o.b. inland point, country of importation.

47.303-12 Ex dock, pier, or warehouse, port of importation.

(a) *Explanation of delivery term.* "Ex dock, pier, or warehouse, port of importation" means free of expense to the Government delivered on the designated dock or pier or in the warehouse at the specified port of importation.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2)(i) Deliver shipment in good order and condition; and

(ii) Pay and bear all charges up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(3) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-40, Ex Dock, Pier, or Warehouse, Port of Importation, when the delivery term is ex dock, pier, or warehouse, port of importation.

47.303-13 C. & f. destination.

(a) *Explanation of delivery term.* “C.&f. destination” means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the contractor.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2)(i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination.

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery; and

(5) At the Government’s request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

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

47.303-14 C.i.f. destination.

(a) *Explanation of delivery term.* “C.i.f. destination” means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the contractor.

(b) *Contractor responsibilities.* The contractor’s responsibilities are the same as those listed in 47.303-13(b), except that, in addition, the contractor shall obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government contracting officer.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-42, C.i.f. Destination, when the delivery term is c.i.f. destination.

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

(a) *Explanation of delivery term.* “F.o.b. designated air carrier’s terminal, point of exportation” means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier’s terminal specified in the contract.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean Government bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and

(5) At the Government’s request and expense, assist in obtaining the documents required for the purpose of exportation.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-43, F.o.b. Designated Air Carrier’s Terminal, Point of Exportation, when the delivery term is f.o.b. designated air carrier’s terminal, point of exportation.

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

(a) *Explanation of delivery term.* “F.o.b. designated air carrier’s terminal, point of importation” means free of expense to the Government delivered to the air carrier’s terminal at the point of importation specified in the contract.

(b) *Contractor responsibilities.* The contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3)(i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and

(ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation

costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.

(c) *Contract clause.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-44, F.o.b. Designated Air Carrier's Terminal, Point of Importation, when the delivery term is f.o.b. designated air carrier's terminal, point of importation.

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

(a) If it is advantageous to the Government, the contracting officer may authorize the contractor to ship supplies, which have been acquired f.o.b. origin, to domestic destinations, including DOD air and water terminals by common carriers on commercial bills of lading. Such shipments shall not exceed 150 pounds by commercial air or 1,000 pounds by other commercial carriers and shall not have a security classification.

(b) The contracting officer may authorize the shipments under paragraph (a) of this subsection to be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations, if all appropriate f.o.b. origin shipments under one or more Government contracts have been consolidated initially. The contractor may be authorized to consolidate less-than-carload or less-than-truckload Government shipments with its own shipments so that the Government can take advantage of lower carload or truckload freight costs. The Government shall assume its pro rata share of the combined shipment cost. Agency transportation personnel shall evaluate overall transportation costs before authorizing any movement to ensure savings to the Government consistent with other contract and traffic management considerations. When consolidation is authorized, a copy of the commercial bill of lading shall be mailed promptly to each consignee.

(c) Shipments under prepaid commercial bills of lading, as authorized in paragraph (a) of this subsection, do not require a contract modification. Unless otherwise provided in the contract, the supplies move for the account of, and at the risk of, the Government. The supplies become Government property when loaded on the carrier's equipment and the contractor has obtained the carrier's receipt. The contractor pays the transportation charges and is reimbursed by the Government. Loss or damage claims shall be processed in accordance with agency regulations.

(d) The contractor's invoice for reimbursement by the Government shall show the prepaid transportation charges as agreed (see paragraph (b) of this subsection), as a separate item for each individual shipment. The contractor shall support the

transportation charges with a copy of the carrier's receipted freight bill or other evidence of receipt, except as follows:

(1) A Government agency may determine that receipted freight bills or other evidence of receipt are not required for transportation charges of \$100 or less.

(2) A Government agency may pay an invoiced but unsupported transportation charge of \$250 or less per transaction (*i.e.*, purchase, invoice, or aggregate billing or payment for multiple purchases), if—

(i) The contractor cannot reasonably provide a receipted freight bill; and

(ii) The agency has determined that the charges are reasonable. Determination of reasonableness may be based on—

(A) Past experience (authenticated transportation charges for similar shipments);

(B) Rate checks;

(C) Copies of previous freight bills submitted by the contractor; or

(D) Other information submitted by the contractor to substantiate the amount claimed.

(3) Receipted freight bills in support of invoiced transportation charges of \$100 or less are not required for reimbursement by the Government, if—

(i) The underlying contract specifies retention by the contractor of all records for at least 3 years after final payment under the contract; and

(ii) The contractor agrees to furnish evidence of payment when requested by the Government.

(e) Shipments and invoices shall not be split to reduce transportation charges to \$100 or less per transaction as a means of avoiding the required documented support for the charges. See paragraph (d)(2) of this subsection for unsupported transportation charges of \$250 or less.

(f) The contracting officer shall insert the clause at 52.247-65, F.o.b. Origin, Prepaid Freight-Small Package Shipments, in solicitations and contracts when f.o.b. origin shipments are to be made.

47.304 Determination of delivery terms.

47.304-1 General.

(a) The contracting officer shall determine f.o.b. terms generally on the basis of overall costs, giving due consideration to the criteria given in 47.304.

(b) Solicitations shall specify whether offerors must submit offers f.o.b. origin, f.o.b. destination, or both; or whether offerors may choose the basis on which they make an offer. The contracting officer shall consider the most advantageous delivery point, such as—

(1) F.o.b. origin, carrier's equipment, wharf, or specified freight station near contractor's plant; or

(2) F.o.b. destination.

(c) In determining whether f.o.b. origin or f.o.b. destination is more advantageous to the Government, the contracting officer shall consider the availability of lower freight rates (Government rate tenders) to the Government for f.o.b. origin acquisitions. F.o.b. origin contracts also present other desirable traffic management features, in that they—

- (1) Permit use of transit privileges (see 47.305-13);
 - (2) Permit diversions to new destinations without price adjustment for transportation (see 47.305-11);
 - (3) Facilitate use of special routings or types of equipment (e.g., circuitous routing or oversize shipments) (see 47.305-14);
 - (4) Facilitate, if necessary, use of premium cost transportation and permit Government-controlled transportation;
 - (5) Permit negotiations for reduced freight rates (see 47.104-1(b)); and
 - (6) Permit use of small shipment consolidation stations.
- (d) When destinations are tentative or unknown, the solicitation shall be f.o.b. origin only (see 47.305-5).
- (e) When the size or quantity of supplies with confidential or higher security classification requires commercial transportation services, the contracting officer shall generally specify f.o.b. origin acquisitions.
- (f) When acceptance must be at destination, solicitation shall be on an f.o.b. destination only basis.

(g) Following are examples of situations when solicitations shall normally be on an f.o.b. destination only basis because it is advantageous to the Government (see 47.305-4):

- (1) Bulk supplies, such as coal, that require other than Government-owned or operated handling, storage, and loading facilities, are destined for shipment outside the continental United States.
- (2) Steel or other bulk construction products are destined for shipment outside the continental United States.
- (3) Supplies consist of forest products such as lumber.
- (4) Perishable or medical supplies are subject to in-transit deterioration.
- (5) Evaluation of f.o.b. origin offers is anticipated to result in increased administrative lead time or administrative cost that would outweigh the potential advantages of an f.o.b. origin determination.

47.304-2 Shipments within CONUS.

(a) Solicitations shall provide that offers may be submitted on the basis of either or both f.o.b. origin and f.o.b. destination and that they will be evaluated on the basis of the lowest overall cost to the Government.

(b) When sufficient reasons exist not to follow this policy, the contract file shall be documented to include the reasons.

47.304-3 Shipments from CONUS for overseas delivery.

(a) When Government acquisitions involve shipments from CONUS to overseas destinations, delivery f.o.b. origin

may afford not only the economies of lower freight rates available to the Government within the United States, but also flexibility for selection of—

- (1) The port of export; and
- (2) The ocean transportation providing the lowest overall cost to the Government.

(b)(1) Unless there are valid reasons to the contrary (see 47.304-5), acquisition of supplies originating within CONUS for ultimate delivery to destinations outside CONUS shall be made on the basis of f.o.b. origin. This policy applies to supplies and equipment to be shipped either directly to a port area for export or to a storage or holding area for subsequent forwarding to a port area for export.

(2) Justification for the solicitation of offers on other than an f.o.b. origin basis shall be recorded and the contract file documented accordingly.

(c) Export cargo involves considerations of operational and cost factors from the point of origin within CONUS to the overseas port destination. The lowest cost of shipping can be determined only by evaluating and comparing the various prospective landed costs (including inland, terminal, and ocean costs). Also, agencies may have export licensing privileges for shipments to foreign destinations. The contracting officer shall obtain advice from the transportation officer to ensure full use of these privileges.

47.304-4 Shipments originating outside CONUS.

(a) Unless there are valid reasons to the contrary (see 47.304-5), acquisition of supplies originating outside CONUS for ultimate delivery to destinations within CONUS or elsewhere, regardless of the quantity of the shipments, shall be on the basis of f.o.b. origin or f.o.b. destination, whichever is more advantageous to the Government.

(b) The contracting officer shall request the advice of the transportation officer to determine the most appropriate place of delivery to be specified in acquisition documents, giving full consideration to the possible use of Government transportation facilities, reduced rates available, special licensing or custom requirements, and availability of U.S. flag shipping services between the points involved (see Subpart 47.5).

47.304-5 Exceptions.

(a) Unusual conditions or circumstances may require the use of terms other than f.o.b. origin or f.o.b. destination. Such conditions or circumstances include, but are not limited to—

- (1) Transportation disabilities at origin or destination;
- (2) Mode of transportation required;
- (3) Availability of Government or commercial loading, unloading, or transshipment facilities;
- (4) Characteristics of the supplies;
- (5) Trade customs related to certain supplies;
- (6) Origins or destinations in Alaska and Hawaii; and
- (7) Program requirements.

(b) Contracting officers shall obtain assistance from transportation officers before issuing solicitations when unusual conditions or circumstances exist that relate to f.o.b. terms.

47.305 Solicitation provisions, contract clauses, and transportation factors.

(a) The contracting officer shall coordinate transportation factors with the transportation office during the planning, solicitation, and award phases of the acquisition process (see 47.105).

(b) To the extent feasible, activities shall schedule deliveries to effect savings in transportation costs, and concomitant reductions in energy consumption by carriers (see 47.305-7 and 47.305-8 for specific possibilities).

47.305-1 Solicitation requirements.

When the acquisition of supplies is on f.o.b. origin or f.o.b. destination delivery terms, the contracting officer shall include in solicitations a requirement that the offeror furnish the Government as much of the following data as is applicable to the particular acquisition:

(a) Modes of transportation and, if rail transportation is used, names of rail carriers serving the offeror's facility.

(b) The number of railroad cars, motor trucks, or other conveyances that can be loaded per day.

(c) Type of packaging; *e.g.*, box, carton, crate, drum, bundle, skids, and when applicable, package number from the governing freight classification.

(d) Number of units packed in one container.

(e) Guaranteed maximum shipping weight; cubic measurement; and length, width, and height of each container.

(f) Minimum size of each shipment.

(g) Number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

(h) Description of material in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable.

(i) Benefits available to the Government under transit arrangements made by the offeror.

(j) Other requirements as stated under specific section headings.

47.305-2 Solicitations f.o.b. origin and f.o.b. destination—lowest overall cost.

(a) Solicitations, when appropriate, shall specify that offers may be f.o.b. origin, f.o.b. destination, or both; and that they will be evaluated on the basis of the lowest overall cost to the Government.

(b) When offers are solicited on the basis of both f.o.b. origin and f.o.b. destination, the contracting officer shall insert in solicitations the provision at 52.247-45, F.o.b. Origin and/or F.o.b. Destination Evaluation.

47.305-3 F.o.b. origin solicitations.

When preparing f.o.b. origin solicitations, the contracting officer shall refer to 47.303, where f.o.b. origin clauses relating to standard delivery terms are prescribed, and to 42.1404-2, where the use of bills of lading, parcel post, and indicia mail is prescribed. Supply solicitations that will or may result in f.o.b. origin contracts shall also contain requirements, information, provisions, and clauses concerning the following items:

(a) Delivery in carload or truckload lots f.o.b. carrier's equipment, wharf, or freight station.

(b) The requirement that the offeror furnish the following information with the offer:

(1) Location of the offeror's actual shipping point(s) (street address, city, State, and ZIP code) from which supplies will be delivered to the Government.

(2) Whether the offeror's shipping point has a private railroad siding, and the name of the rail carrier serving it.

(3) When the offeror's shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it. (This will enable transportation officers, when issuing routing instructions, to select the mode of transportation that will provide the required service at the lowest possible overall cost.)

(4)(i) The quantity of supplies to be shipped from each shipping point.

(ii) The contracting officer shall insert in f.o.b. origin solicitations the provision at 52.247-46, Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers, when price evaluation for shipments from various shipping points is contemplated.

(c) When delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, the charges required to deliver the shipment to the point where the line-haul rate is applicable.

(d) When delivery is "f.o.b. origin, freight allowed," the basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

(e) If f.o.b. origin offers only are desired, a statement that offers submitted on any other basis will be rejected as non-responsive.

(f)(1) *The methods of transportation used in evaluating offers.* The Government normally uses land transportation by regulated common carriers between points in the 48 contiguous United States and the District of Columbia.

(2) The contracting officer shall insert the provision at 52.247-47, Evaluation—F.o.b. Origin, in solicitations that require prices f.o.b. origin for the purpose of establishing the basis on which offers will be evaluated.

(g)(1) When it is believed that prospective contractors are likely to include in f.o.b. origin offers a contingency to compensate for what may be an unfavorable routing condition by

the Government at the time of shipment, the contracting officer may permit prospective contractors to state in offers a reimbursable differential that represents the cost of bringing the supplies to any f.o.b. origin place of delivery specified by the Government at the time of shipment (see the clause at 52.247-33, F.o.b. Origin, with Differentials).

(2) Following are situations that might impose on the contractor a substantial cost above “at plant” or “commercial shipping point” prices because of Government-required routings:

(i) The loading nature of the supplies; *e.g.*, wheeled vehicles.

(ii) The different methods of shipment specified by the Government; *e.g.*, towaway, driveaway, tri-level vehicle, or rail car, that may increase the contractor’s cost in varying amounts for bringing the supplies to, or loading and bracing the supplies at, the specified place of delivery.

(iii) The contractor’s f.o.b. origin shipping point is a port city served by United States inland, coastwise, or inter-coastal water transportation, and the contractor would incur additional costs to make delivery f.o.b. a wharf in that city to accommodate water routing specified by the Government.

(iv) The contractor’s plant does not have a private rail siding and in order to ship by Government-specified rail routing, the contractor would be required to deliver the supplies to a public siding or freight terminal and to load, brace, and install dunnage in rail cars.

47.305-4 F.o.b. destination solicitations.

(a) When preparing f.o.b. destination solicitations, the contracting officer shall refer to 47.303 for the prescription of f.o.b. destination clauses relating to standard delivery terms.

(b) If f.o.b. destination only offers are desired, the solicitation shall state that offers submitted on a basis other than f.o.b. destination will be rejected as nonresponsive.

(c) When supplies will or may be purchased f.o.b. destination but inspection and acceptance will be at origin, the contracting officer shall insert in solicitations and contracts the clause at 52.247-48, F.o.b. Destination—Evidence of Shipment.

47.305-5 Destination unknown.

(a)(1) When destinations are unknown, solicitations shall be f.o.b. origin only.

(2) The contracting officer shall include in the contract file justifications for such solicitations.

(b)(1) When the exact destination of the supplies to be acquired is not known, but the general location of the users can be reasonably established, the acquiring activity shall designate tentative destinations for the purpose of computing transportation costs, showing estimated quantities for each tentative destination.

(2) The contracting officer shall insert in solicitations the provision at 52.247-49, Destination Unknown, when destinations are tentative and only for the purpose of evaluating offers.

(3) If it is necessary to control subsequent shipping weights, the solicitation shall state that subsequent shipments shall be made in carloads or truckloads (see the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments).

(c)(1) When exact destinations are not known and it is impracticable to establish tentative or general delivery places for the purpose of evaluating transportation costs, the contracting officer shall insert in solicitations the provision at 52.247-50, No Evaluation of Transportation Costs.

(2) The solicitation shall also state that the transportation costs of subsequent shipments must be controlled (see, for example, the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments).

47.305-6 Shipments to ports and air terminals.

(a) When supplies are acquired on the basis of the delivery terms in 47.303-8 through 47.303-16, the solicitation shall include a requirement that the offeror furnish the Government the following information:

(1) When the delivery term is “f.a.s. vessel, port of shipment,” “f.o.b. vessel, port of shipment,” or “f.o.b. inland carrier, point of exportation,” the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment;

(iii) The quantity that can be made available for loading to vessel per running day of 24 hours (if acquisition involves a commodity to be shipped in bulk);

(iv) The minimum leadtime required to make supplies available for loading to vessel; and

(v) The port and pier or other designation and, when applicable, the maximum draft of vessel (in feet) that can be accommodated.

(2) When the delivery term is: f.o.b. inland point, country of importation” or “f.o.b. designated air carrier’s terminal, point of importation,” the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) Other data appropriate to shipment by air carrier.

(3) When the delivery term is “ex dock, pier or warehouse, port of importation” or “c.&f. destination,” the required data shall include—

(i) A delivery schedule in number of units and/or long or short tons;

(ii) Maximum quantities available per shipment; and

(iii) The number of containers or units that can be loaded in a car, truck, or other conveyance of the size normally used (specify type and size) for the commodity.

(4) When the delivery term is “c.i.f. destination,” the required data shall include—

(i) The same as specified in 47.305-6(a)(3); and

(ii) The amount and type of marine insurance coverage; *e.g.*, whether the coverage is “With Average” or “Free of Particular Average” and whether it covers any special risks or excludes any of the usual risks associated with the specific commodity involved.

(5) When the delivery term is “f.o.b. designated air carrier’s terminal, point of exportation,” the required data shall include—

(i) A delivery schedule number of units, type of package, and individual weight and dimensions of each package;

(ii) Minimum leadtime required to make supplies available for loading into aircraft;

(iii) Name of airport and location to which shipment will be delivered; and

(iv) Other data appropriate to shipment by air carrier.

(b) When supplies are acquired for known destinations outside CONUS and originate within CONUS, the contracting officer shall, for transportation evaluation purposes, note in the solicitation the CONUS port of loading or point of exit (aerial or water) and the water port of debarkation that serves the overseas destination.

(c) The contracting officer may also, for evaluation purposes, list in the solicitation other CONUS ports that meet the eligibility criteria compatible with the nature and quantity of the supplies, their destination, type of carrier required, and specified overseas delivery dates. This permits offerors that are geographically remote from the port that normally serves the overseas destination to be competitive as far as transportation costs are concerned.

(d) Unless logistics requirements limit the ports of loading to the ports listed in the solicitation, the solicitation shall state that—

(1) Offerors may nominate additional ports (including ports in Alaska and Hawaii) more favorably located to their shipping points; and

(2) These ports will be considered in the evaluation of offers if they possess all requisite capabilities of the listed ports in relation to the supplies being acquired.

(e) When supplies are to be exported through CONUS ports and offers are solicited on an f.o.b. origin or f.o.b. destination basis, the contracting officer shall insert in solicitations the provision at 52.247-51, Evaluation of Export Offers. The contracting officer shall use the provision with its—

(1) Alternate I, when the CONUS ports of export are DOD water terminals;

(2) Alternate II, when offers are solicited on an f.o. b. origin only basis; or

(3) Alternate III, when offers are solicited on an f.o.b. destination only basis.

(f)(1) When the supplies are to move in the Defense Transportation System (DTS) (see 47.301-3), the contract shall specify that—

(i) A Transportation Control Movement Document (TCMD) must be dispatched to the appropriate DOD air or water clearance authority in accordance with MILSTAMP procedures for all shipments consigned to DOD air or water terminal transshipment points; and

(ii) An Export Release must be obtained for supplies to be transshipped via a water port of loading to overseas destinations, except for shipments for which an Export Release is not required, generally shipments of less than 10,000 pounds, (see paragraph 202024 of the Defense Traffic Management Regulation, AR 55-355, NAVSUP 4600.70, MCO 4600.14A, AFM 75-2, DLAR 4500.3).

(2) When shipments will be consigned to DOD air or water terminal transshipment points, the contracting officer shall insert in solicitations and contracts the clause at 52.247-52, Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.

(g) When a contract will not generate any shipments that require an Export Release, only the DOD CONUS ports that serve the overseas destination shall be listed in the solicitation (see MILSTAMP at 47.301-3), except that the responsible contracting officer may limit the water ports listed when such limitation is considered necessary to meet delivery or other requirements.

(h) The award shall specify the United States ports of loading that afford the lowest overall cost to the overseas destination.

(i) When supplies will be from origins outside CONUS to destinations either within or outside CONUS, the contracting officer shall use the appropriate f.o.b. term and include evaluation-of-offers information.

(j) In furtherance of the Cargo Preference Act of 1954 (46 U.S.C. 1241(b)), to encourage and foster the American Merchant Marine, the port of delivery of supplies originating outside the United States and shipped by ocean vessel shall be based on the availability of United States-flag vessels between the ports involved, unless the acquiring activity has given other specific instructions. (See Subpart 47.5—Ocean Transportation by U.S.-Flag Vessels.)

(k) For application of the Fly America Act to the transportation of supplies and personnel when the Government is responsible for the transportation costs, see Subpart 47.4—Air Transportation by U.S.-Flag Carriers.

(1) Military and civilian agencies shall obtain assistance from transportation offices in connection with all export shipments (see 47.105).

47.305-7 Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.

(a) *Quantity analysis.* (1) The requiring activity shall consider the acquisition of carload or truckload quantities.

(2) When additional quantities of the supplies being acquired can be transported at lower unit transportation costs or with a relatively small increase in total transportation costs, with no impairment to the program schedule, the contracting officer shall ascertain from the requiring activity whether there is a known requirement for additional quantities. This may be the case, for example, when the additional quantity could profitably be stored by the activity for future use, or could be distributed advantageously to several using activities on the same transportation route or in the same geographical area.

(b) *Direct delivery.* When it is the usual practice of a requiring activity to acquire supplies in large quantities for shipment to a central point and subsequent distribution to using activities, as needed, consideration shall be given, if sufficient quantities are involved to warrant scheduling direct delivery, to the feasibility of providing for direct delivery from the contractor to the using activity, thereby reducing the cost of transportation and handling.

(c) *Crosshauling and backhauling.* The contracting officer shall select distribution and transshipment facilities intermediate to origins and ultimate destinations to reduce crosshauling and backhauling; *i.e.*, to the transportation of personal property of the same kind in opposite directions or the return of the property to or through areas previously traversed in shipment.

47.305-8 Consolidation of small shipments and the use of stopoff privileges.

(a) *Consolidation of small shipments.* Consolidation of small shipments into larger lots frequently results in lower transportation costs. Therefore, the contracting officer, after consultation with the transportation office and the activity requiring the supplies, may revise the delivery schedules to provide for deliveries in larger quantities.

(b) *Stopping for partial unloading.* When feasible, schedules for delivery of supplies to multiple destinations shall be consolidated and the stopoff privileges permitted under carrier tariffs shall be used for partial unloading at one or more points directly en route between the point of origin and the last destination.

47.305-9 Commodity description and freight classification.

(a) Generally, the freight rate for supplies is based on the rating applicable to the freight classification description pub-

lished in tariffs filed with Federal and State regulatory bodies. Therefore, the contracting officer shall show in the solicitation a complete description of the commodity to be acquired and of packing requirements to determine proper transportation charges for the evaluation of offers. If supplies cannot be properly classified through reference to freight classification tariffs or if doubt exists, the contracting officer shall obtain the applicable freight classification from the transportation office. In some situations prospective contractors have established an official freight classification description that can be applied.

(b)(1) When the supplies being acquired are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply, the contracting officer shall insert in solicitations the provision at 52.247-53, Freight Classification Description.

(2) The contracting officer shall alert the transportation officer to the possibility of negotiations for appropriate freight classification ratings and reasonable transportation rates.

(c) The solicitation shall contain adequate descriptions of explosives and other dangerous supplies according to—

(1) The regular freight classification; and

(2) The hazardous material description and hazard class as shown in 49 CFR 172.101.

(d) The contracting officer shall furnish the freight classification information developed in 47.305-9(a), (b), and (c) of this section to the contract administration office.

47.305-10 Packing, marking, and consignment instructions.

(a) Acquisition documents shall include packing and marking requirements necessary to prevent deterioration of supplies and damages due to the hazards of shipping, handling, and storage, and, when appropriate, marking in accordance with the requirements of 49 CFR 172.300.

(b) Contracts shall include complete consignment and marking instructions at the time the contract is awarded to ensure that supplies are delivered to proper destinations without delay. If complete consignment information is not initially known, the contracting officer shall issue amended delivery instructions under the Changes clause of the contract (see 43.205) as soon as the information becomes known.

(c) If necessary to meet required delivery schedules, the contracting officer may issue instructions by telephone, teletype, or telegram. The contracting officer shall confirm these instructions in writing.

(d) Shipments for civilian agencies shall be marked as specified in Federal Standard 123, Marking for Domestic Shipment (Civil Agencies).

47.305-11 Options in shipment and delivery.

Although the clauses prescribed in Subpart 43.2 allow certain changes to be made in regard to shipment and delivery, it may be desirable to provide specifically for certain options in the solicitation. The Government may reserve the right to—

(a) Direct deliveries of all or part of the contract quantity to destinations or to consignees other than those specified in the solicitation and in the contract;

(b) Direct shipments in quantities that may require transportation rates different from those on which the contract price is based; and

(c) Direct shipments by a mode of transportation other than that stipulated in the solicitation and in the contract.

47.305-12 Delivery of Government-furnished property.

(a)(1) When Government property is furnished to a contractor and transportation costs to the Government are a factor in the evaluation of offers, the contracting officer shall include in the solicitation a clear description of the property, its location, and other information necessary for the preparation of cost estimates.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-55, F.o.b. Point for Delivery of Government-Furnished Property, when Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs.

(b) The contracting officer shall describe explosive and dangerous material according to—

(1) The regular freight classification and

(2) The hazardous material description and hazard class as shown in 49 CFR 172.101.

47.305-13 Transit arrangements.

(a) *Transit privileges.* (1) Transit arrangements permit the stopping of a carload or truckload shipment at a specific intermediate point en route to the final destination for storage, processing, or other purposes, as specified in carrier tariffs or rate tenders. A single through rate is charged from origin to final destination plus a transit or other related charge, rather than a more expensive combination of rates to and from the transit point.

(2) The contracting officer shall consider possible benefits available to the Government through the use of existing transit arrangements or through efforts to obtain additional transit privileges from the carriers. Solicitations incorporating transit arrangements shall be restricted to f.o.b. origin offers, as f.o.b. destination offers can only quote fixed overall delivered prices at first destination.

(3)(i) Traffic management personnel shall furnish information and analyses of situations in which transit arrangements may be beneficial. The quantity to be awarded must be of sufficient tonnage to ensure that carload/truckload ship-

ments can be made by the contractor, and there should be reasonable certainty that shipments out of the transit point will be requested in carload/truckload quantities.

(ii) The contracting officer shall insert in solicitations the provision at 52.247-56, Transit Arrangements, when benefits may accrue to the Government because transit arrangements may apply.

(b) *Transit credits.* (1) In evaluations of f.o.b. origin offers for large quantities of supplies that contractors normally have in process or storage at intermediate points, contracting officers shall make use of contractors' earned commercial transit credits, which are recorded with the carriers. A transit credit represents the transportation costs for a recorded tonnage from the initial point to an intermediate point. The remaining transportation charges from the intermediate point to the Government destination, because they are based on through rates, are frequently lower than the transportation charges that would apply for the same tonnage if the intermediate point were the initial origin point.

(2) If transit credits apply, the contract shall state that the contractor shall ship the goods on prepaid commercial bills of lading, subject to reimbursement by the Government. The contracting officer shall ensure that this does not preclude a proper change in delivery terms under the Changes clause. The shipments move for the account and at the risk of the Government, as they become Government property at origin.

(3) The contractor shall show the transportation and transit charges as separate amounts on the invoice for each individual shipment. The amount to be reimbursed by the Government shall not exceed the amount quoted in the offer. Regulations and procedures regarding contractor prepaid transportation charges are prescribed in 42.1403-2.

(4) The contracting officer shall insert in solicitations and contracts the clause at 52.247-57, Transportation Transit Privilege Credits, when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits.

47.305-14 Mode of transportation.

Generally, solicitations shall not specify a particular mode of transportation or a particular carrier. If the use of particular types of carriers is necessary to meet program requirements, the solicitation shall provide that only offers involving the specified types of carriers will be considered. The contracting officer shall obtain all specifications for mode, route, delivery, etc., from the transportation office.

47.305-15 Loading responsibilities of contractors.

(a)(1) Contractors are responsible for loading, blocking, and bracing carload shipments as specified in standards published by the Association of American Railroads.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-58, Loading, Blocking, and Bracing of Freight Car Shipments, when supplies may be shipped in carload lots by rail.

(b) If the nature of the supplies or safety, environmental, or transportability factors require special methods for securing the supplies on the carrier's equipment, or if only a special mode of transportation or type vehicle is appropriate, the contracting officer shall include in solicitations detailed specifications that have been coordinated with the transportation office.

47.305-16 Shipping characteristics.

(a) *Required shipping weights.* The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

(b) *Guaranteed shipping characteristics.* (1) The contracting officer shall insert in solicitations and contracts, excluding those at or below the simplified acquisition threshold, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the shipping characteristics listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.

(2) The award document shall show the shipping characteristics used in the evaluation.

(c) *Minimum size of shipments.* When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.

(d) *Specific quantities unknown.* (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery "f.o.b. origin" and/or "f.o.b. destination" and that offers will be evaluated on both bases.

(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

47.305-17 Returnable cylinders.

The contracting officer shall insert the clause at 52.247-66, Returnable Cylinders, in a solicitation and contract whenever the contract involves the purchase of gas in contractor-furnished returnable cylinders and the contractor retains title to the cylinders.

47.306 Transportation factors in the evaluation of offers.

When evaluating offers, contracting officers shall consider transportation and transportation-related costs as well as the offerors' shipping and receiving facilities.

47.306-1 Transportation cost determinations.

When requesting the transportation officer to assist in evaluating offers, the contracting officer shall give the transportation officer all pertinent data, including the following information:

- (a) A complete description of the commodity being acquired including packaging instructions.
- (b) Planned date of award.
- (c) Date of initial shipment.
- (d) Total quantity to be shipped (including weight and cubic content, when appropriate).
- (e) Delivery schedule.
- (f) Contract period.
- (g) Possible use of transit privileges, including stopoffs for partial loading or unloading, or both.

47.306-2 Lowest overall transportation costs.

(a) For the evaluation of offers, the transportation officer shall give to the contracting officer, and the contracting officer shall use, the lowest available freight rates and related accessorial and incidental charges that—

- (1) Are in effect on, or become effective before, the expected date of the initial shipment; and
- (2) Are on file or published on the date of the bid opening.

(b) If rates or related charges become available after the bid opening or the due date of offers, they shall not be used in the evaluation unless they cover transportation for which no applicable rates or accessorial or incidental costs were in existence at the time of bid opening or due date of the offers.

47.306-3 Adequacy of loading and unloading facilities.

(a) When determining the transportation capabilities of an offeror, the contracting officer shall consider the type and adequacy of the offeror's shipping facilities, including the ability to consolidate and ship in carload or truckload lots.

(b) The contracting officer shall consider the type and adequacy of the consignee's receiving facilities to avoid shipping schedules that cannot be properly accommodated.

Subpart 47.4—Air Transportation by U.S.-Flag Carriers

47.401 Definitions.

As used in this subpart—

“Air freight forwarder” means an indirect air carrier that is responsible for the transportation of property from the point of receipt to the point of destination, and utilizes for the whole or any part of such transportation the services of a direct air carrier or its agent, or of another air freight forwarder.

“Gateway airport abroad” means the airport from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

“Gateway airport in the United States” means the last U.S. airport from which the traveler’s flight departs or the first U.S. airport at which the traveler’s flight arrives.

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

“U.S.-flag air carrier” means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 41101).

47.402 Policy.

Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that Federal employees and their dependents, consultants, contractors, grantees, and others use U.S.-flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent service by these carriers is available.

47.403 Guidelines for implementation of the Fly America Act.

This section 47.403 is based on the Guidelines for Implementation of the Fly America Act (case number B-138942), issued by the Comptroller General of the United States on March 31, 1981.

47.403-1 Availability and unavailability of U.S.-flag air carrier service.

(a) If a U.S.-flag air carrier cannot provide the international air transportation needed or if the use of U.S.-flag air carrier service would not accomplish an agency’s mission, foreign-flag air carrier service may be deemed necessary.

(b) U.S.-flag air carrier service is considered available even though—

(1) Comparable or a different kind of service can be provided at less cost by a foreign-flag air carrier;

(2) Foreign-flag air carrier service is preferred by, or is more convenient for, the agency or traveler; or

(3) Service by a foreign-flag air carrier can be paid for in excess foreign currency (unless U.S.-flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies).

(c) Except as provided in paragraph 47.403-1(a), U.S.-flag air carrier service shall be used for U.S. Government-financed commercial foreign air travel if service provided by U.S.-flag air carriers is available. In determining availability of a U.S.-flag air carrier, the following scheduling principles shall be followed unless their application would result in the last or first leg of travel to or from the United States being performed by a foreign-flag air carrier:

(1) U.S.-flag air carrier service available at point of origin shall be used to destination or, in the absence of direct or through service, to the farthest interchange point on a usually traveled route.

(2) When an origin or interchange point is not served by a U.S.-flag air carrier, foreign-flag air carrier service shall be used only to the nearest interchange point on a usually traveled route to connect with U.S.-flag air carrier service.

(3) When a U.S.-flag air carrier involuntarily reroutes the traveler via a foreign-flag air carrier, the foreign-flag air carrier may be used notwithstanding the availability of alternative U.S.-flag air carrier service.

(d) For travel between a gateway airport in the United States and a gateway airport abroad, passenger service by U.S.-flag air carrier shall not be considered available if—

(1) The gateway airport abroad is the traveler’s origin or destination airport and the use of U.S.-flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by a foreign-flag air carrier; or

(2) The gateway airport abroad is an interchange point and the use of U.S.-flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from, or accelerated arrival at, the gateway airport in the United States would extend time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier.

(e) For travel between two points outside the United States, the rules in paragraphs 47.403-1(a), (b), and (c) shall be applicable, but passenger service by a U.S.-flag air carrier shall not be considered to be reasonably available if—

(1) Travel by a foreign-flag air carrier would eliminate two or more aircraft changes en route;

(2) One of the two points abroad is the gateway airport en route to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier, including accelerated arrival at the over seas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(3) The travel is not part of the trip to or from the United States and the use of a U.S.-flag air carrier would extend the time in a travel status by at least 6 hours more than travel by a foreign-flag air carrier including delay at origin, delay en route, and accelerated arrival at destination.

(f) For all short-distance travel under either paragraph (d) or paragraph (e) of 47.403-1, U.S. air carrier service shall not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign-flag air carrier is 3 hours or less and service by a U.S.-flag air carrier would involve twice such travel time.

47.403-2 Air transport agreements between the United States and foreign governments.

Nothing in the guidelines of the Comptroller General (see 47.403) shall preclude, and no penalty shall attend, the use of a foreign-flag air carrier that provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals at 49 U.S.C. 40101 and provide reciprocal rights and benefits.

47.403-3 Disallowance of expenditures.

(a) Agencies shall disallow expenditures for U.S. Government-financed commercial international air transportation on foreign-flag air carriers unless there is attached to the appropriate voucher a memorandum adequately explaining why service by U.S.-flag air carriers was not available, or why it was necessary to use foreign-flag air carriers.

(b) When the travel is by indirect route or the traveler otherwise fails to use available U.S.-flag air carrier service, the amount to be disallowed against the traveler is based on the

loss of revenues suffered by U.S.-flag air carriers as determined under the following formula, which is prescribed and more fully explained in 56 Comp. Gen. 209 (1977):

<u>Sum of U.S.-flag carrier segment mileage, authorized</u>		Fare payable
Sum of all segment mileage, authorized	x	by
<i>Minus</i>		Government
<u>Sum of U.S.-flag carrier segment mileage, traveled</u>	x	Through
Sum of all segment mileage, traveled		fare payed

(c) The justification requirement is satisfied by the contractor's use of a statement similar to the one contained in the clause at 52.247-63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

47.404 Air freight forwarders.

(a) Agencies may use air freight forwarders that are engaged in international air transportation for U.S. Government-financed movements of property. The rule on disallowance of expenditures in 47.403-3(a) applies also to the air carriers used by these international air freight forwarders.

(b) Agency personnel shall inform international air freight forwarders that to facilitate prompt payments of their bills, they shall submit with their bills—

(1) A copy of the airway bill or manifest showing the air carriers used; and

(2) Justification for the use of foreign-flag air carriers similar to the one shown in the clause at 52.247-63, Preference for U.S.-Flag Air Carriers.

47.405 Contract clause.

The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13 or contracts for commercial items (see Part 12).

Subpart 47.5—Ocean Transportation by U.S.-Flag Vessels

47.500 Scope of subpart.

This subpart prescribes policy and procedures for giving preference to U.S.-flag vessels when transportation of supplies by ocean vessel is required. This subpart does not apply to the Department of Defense (DoD). Policy and procedures applicable to DoD appear in DFARS subpart 247.5.

47.501 Definitions.

As used in this subpart—

“Dry bulk carrier” means a vessel used primarily for the carriage of shipload lots of homogeneous unmarked nonliquid cargoes such as grain, coal, cement, and lumber.

“Dry cargo liner” means a vessel used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo may be carried in these vessels, including part cargoes of dry bulk items or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

“Foreign-flag vessel” means any vessel of foreign registry including vessels owned by U.S. citizens but registered in a nation other than the United States.

“Government vessel” means a vessel owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, including a privately owned U.S.-flag vessel under bareboat charter to the Government.

“Privately owned U.S.-flag commercial vessel” means a vessel—

- (1) Registered and operated under the laws of the United States,
- (2) Used in commercial trade of the United States,
- (3) Owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, and
- (4) A Government-owned vessel under bareboat charter to, and operated by, U.S. citizens.

“Tanker” means a vessel used primarily for the carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils, and molasses.

“U.S.-flag vessel” when used independently means either a Government vessel or a privately owned U.S.-flag commercial vessel.

47.502 Policy.

(a) The policy of the United States regarding the use of U.S.-flag vessels is stated in the following acts:

- (1) The Cargo Preference Act of 1904 (10 U.S.C. 2631), which requires the Department of Defense to use only U.S.-flag vessels for ocean transportation of supplies for the Army, Navy, Air Force, or Marine Corps unless those vessels are not available at fair and reasonable rates.

(2) The Merchant Marine Act of 1936 (46 U.S.C. Appx. 1101), which declares it is the policy of the United States to foster the development and encourage the maintenance of its merchant marine.

(3) The Cargo Preference Act of 1954 (46 U.S.C. Appx. 1241(b), which is Section 901(b) of the Merchant Marine Act). Under this Act, Government agencies acquiring, either within or outside the United States, supplies that may require ocean transportation shall ensure that at least 50 percent of the gross tonnage of these supplies (computed separately for dry bulk carriers, dry cargo liners, and tankers) is transported on privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels. This applies when the supplies are—

- (i) Acquired for the account of the United States;
- (ii) Furnished to, or for the account of, a foreign nation without provision for reimbursement;
- (iii) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (iv) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) Additional policies providing preference for the use of U.S.-flag vessels are contained in—

- (1) 10 U.S.C. 2634 for the transportation of privately-owned vehicles belonging to service members when making permanent change of station moves;
- (2) 46 U.S.C. Appx. 1241(a) for official business travel by officers and employees of the United States and for the transportation of their personal effects; and
- (3) 46 U.S.C. 1241(c) for the transportation of motor vehicles owned by Government personnel when transportation is at Government expense or otherwise authorized by law.

(c) The provisions of the Cargo Preference Act of 1954 may be temporarily waived when the Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and so notifies the appropriate agency or agencies.

47.503 Applicability.

(a) Except as stated in paragraph (b) of this section and in 47.504, the Cargo Preference Acts of 1904 and 1954 described in 47.502(a) apply to the following cargoes:

- (1) Supplies owned by the Government and in the possession of—
 - (i) The Government;
 - (ii) A contractor; or
 - (iii) A subcontractor at any tier.

(2) Supplies for use of the Government that are contracted for and require subsequent delivery to a Government activity but are not owned by the Government at the time of shipment.

(3) Supplies not owned by the Government at the time of shipment that are to be transported for distribution to foreign assistance programs, but only if these supplies are not acquired or contracted for with local currency funds (see 47.504(b)).

(b) Government-owned supplies to be shipped commercially that are—

(1) In the possession of a department, a contractor, or a subcontractor at any tier and

(2) For use of military departments shall be transported exclusively in privately owned U.S.-flag commercial vessels if such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels.

(c) The 50-percent requirement shall not prevent the use of privately owned U.S.-flag commercial vessels for transportation of up to 100 percent of the cargo subject to the Cargo Preference Act of 1954.

47.504 Exceptions.

The policy and procedures in this subpart do not apply to the following:

(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.

(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).

(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(d) Beginning May 1, 1996, subcontracts for the acquisition of commercial items or commercial components (see 12.504(a)(11)). This exception does not apply to grants-in-aid shipments, such as agricultural and food-aid shipments, to shipments covered under Export-Import Bank loans or guarantees, and to subcontracts under Government contracts or agreements for ocean transportation services.

47.505 Construction contracts.

(a) Except as stated in paragraph (b) of this section, construction contractors, including subcontractors and suppliers, engaged in overseas work shall comply with the policies and regulations in this subpart.

(b) These requirements shall not apply to military assistance, foreign aid, or similar projects under the auspices of the U.S. Government when the recipient nation furnishes, or pays for, at least 50 percent of the transportation, in which event

foreign-flag vessels may be used for a portion not to exceed 50 percent of the gross tonnage for the project.

47.506 Procedures.

(a) The contracting officer shall obtain assistance from the transportation activity (see 47.105) in developing appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve ocean transportation of supplies subject to the requirements of the Cargo Preference Act of 1954 (see 47.502(a)(3)).

(b) When the contractor notifies the contracting officer that a privately owned U.S.-flag commercial vessel is not available, the contracting officer shall seek assistance from the transportation activity.

(c) For purposes of determining the availability of privately owned U.S.-flag commercial vessels at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission may be accepted as fair and reasonable. When applicable rates for charter cargoes are not in published tariffs, a determination as to whether the rates are fair and reasonable shall be obtained from the Maritime Administration.

(d) The Maritime Administration has issued regulations (46 CFR 381) that require agencies to submit reports regarding ocean shipments. Contracting officers shall follow agency regulations when preparing, or furnishing information for, these reports.

47.507 Contract clauses.

(a) The contracting officer shall insert the clause at 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(b) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the basic clause with its Alternate I.

(c) If an applicable statute requires, or it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.505), use the basic clause with its Alternate II.

(d) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.

* * * * *

PART 48—VALUE ENGINEERING

Sec.

48.000 Scope of part.

48.001 Definitions.

Subpart 48.1—Policies and Procedures

48.101 General.

48.102 Policies.

48.103 Processing value engineering change proposals.

48.104 Sharing arrangements.

48.104-1 Determining sharing period.

48.104-2 Sharing acquisition savings.

48.104-3 Sharing collateral savings.

48.104-4 Sharing alternative—no-cost settlement method.

48.105 Relationship to other incentives.

Subpart 48.2—Contract Clauses

48.201 Clauses for supply or service contracts.

48.202 Clause for construction contracts.

This page intentionally left blank.

48.000 Scope of part.

This part prescribes policies and procedures for using and administering value engineering techniques in contracts.

48.001 Definitions.

As used in this part—

“Acquisition savings” means savings resulting from the application of a value engineering change proposal (VECP) to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, that are the net cost reductions on the contract under which the VECP is submitted and accepted, and that are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor's allowable development and implementation costs;

(2) Concurrent contract savings, that are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, that are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral costs” means agency costs of operation, maintenance, logistic support, or Government-furnished property.

“Collateral savings” means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

“Contractor's development and implementation costs” means those costs the contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction” means the instant unit cost reduction adjusted as the contracting officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

(1) Throughout the sharing period, unless the contracting officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated, or

(2) To the calculation of a lump-sum payment, that cannot later be revised.

“Government costs” means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in instant contract cost or price resulting from negative instant contract savings, except that for use in 52.248-3, see the definition at 52.248-3(b).

“Instant contract” means the contract under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If the contract is a multiyear contract, the term does not include quantities funded after VECP acceptance. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any contractor's development or implementation costs) resulting from using the VECP on the instant contract. In service contracts, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on the instant contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the instant contract cost or price when the acceptance of a VECP results in an excess of the contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base” means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period” means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

“Unit” means the item or task to which the contracting officer and the contractor agree the VECP applies.

“Value engineering proposal” means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

Subpart 48.1—Policies and Procedures

48.101 General.

(a) Value engineering is the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Government methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

(b) There are two value engineering approaches:

(1) The first is an incentive approach in which contractor participation is voluntary and the contractor uses its own resources to develop and submit any value engineering change proposals (VECP's). The contract provides for sharing of savings and for payment of the contractor's allowable development and implementation costs only if a VECP is accepted. This voluntary approach should not in itself increase costs to the Government.

(2) The second approach is a mandatory program in which the Government requires and pays for a specific value engineering program effort. The contractor must perform value engineering of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract Schedule. No value engineering sharing is permitted in architect engineer contracts. All other contracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. The objective of this value engineering program requirement is to ensure that the contractor's value engineering effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

48.102 Policies.

(a) MMS shall establish and maintain cost-effective value engineering procedures and processes. Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. Contracting activities will include value engineering provisions in appropriate supply, service, architect-engineer and construction contracts as prescribed by 48.201 and 48.202 except where exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the agency head.

(b) MMS shall—

- (1) Establish guidelines for processing VECP's,
- (2) Process VECP's objectively and expeditiously, and
- (3) Provide contractors a fair share of the savings on accepted VECP's.

(c) MMS shall consider requiring incorporation of value engineering clauses in appropriate subcontracts.

(d) MMS shall use the value engineering program requirement clause (52.248-1, Alternates I or II) in initial production contracts for major system programs (see definition of major system in 34.001) and for contracts for major systems research and development except where the contracting officer determines and documents the file to reflect that such use is not appropriate.

(e) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by 10 U.S.C. 2306(d) and 41 U.S.C. 254(b) (see 15.404-4(c)(4)(i)).

(f) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

(g) The contracting officer determines the sharing periods and sharing rates on a case-by-case basis using the guidelines in 48.104-1 and 48.104-2, respectively. In establishing a sharing period and sharing rate, the contracting officer must consider the following, as appropriate, and must insert supporting rationale in the contract file:

- (1) Extent of the change.
- (2) Complexity of the change.
- (3) Development risk (*e.g.*, contractor's financial risk).
- (4) Development cost.
- (5) Performance and/or reliability impact.
- (6) Production period remaining at the time of VECP acceptance.
- (7) Number of units affected.

(h) Contracts for architect-engineer services must require a mandatory value engineering program to reduce total ownership cost in accordance with 48.101(b)(2). However, there must be no sharing of value engineering savings in contracts for architect-engineer services.

(i) MMS shall establish procedures for funding and payment of the contractor's share of collateral savings and future contract savings.

48.103 Processing value engineering change proposals.

(a) Instructions to the contractor for preparing a VECP and submitting it to the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency procedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing, giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the

period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

(1) The decision to accept or reject a VECP.

(2) The determination of collateral costs or collateral savings.

(3) The decision as to which of the sharing rates applies when Alternate II of the clause at 52.248-1, Value Engineering, is used.

(4) The contracting officer's determination of the duration of the sharing period and the contractor's sharing rate.

48.104 Sharing arrangements.

48.104-1 Determining sharing period.

(a) Contracting officers must determine discrete sharing periods for each VECP. If more than one VECP is incorporated into a contract, the sharing period for each VECP need not be identical.

(b) The sharing period begins with acceptance of the first unit incorporating the VECP. Except as provided in paragraph

(c) of this subsection, the end of the sharing period is a specific calendar date that is the later of—

(1) 36 to 60 consecutive months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or

(2) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted.

(c) For engineering-development contracts and contracts containing low-rate-initial-production or early production units, the end of the sharing period is based not on a calendar date, but on acceptance of a specified quantity of future contract units. This quantity is the number of units affected by the VECP that are scheduled to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted. The specified quantity begins with the first future contract unit affected by the VECP and continues over consecutive deliveries until the sharing period ends at acceptance of the last of the specified quantity of units.

(d) For contracts (other than those in paragraph (c) of this subsection) for items requiring a prolonged production schedule (*e.g.*, ship construction, major system acquisition), the end of the sharing period is determined according to paragraph (b) of this subsection. Agencies may prescribe sharing of future contract savings on all future contract units to be delivered under contracts awarded within the sharing period for essentially the same item, even if the scheduled delivery date is outside the sharing period.

48.104-2 Sharing acquisition savings.

(a) *Supply or service contracts.* (1) The sharing base for acquisition savings is the number of affected end items on contracts of the contracting office accepting the VECP. The sharing rates (Government/contractor) for net acquisition savings for supplies and services are based on the type of contract, the value engineering clause or alternate used, and the type of savings, as follows:

GOVERNMENT/CONTRACTOR SHARES OF NET ACQUISITION SAVINGS (Figures in Percent)				
CONTRACT TYPE	SHARING AGREEMENT			
	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50/50	*50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50/50	(**)	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***75/25	***75/25	85/15	85/15

* The contracting officer may increase the contractor's sharing rate to as high as 75 percent for each VECP. (See 48.102(g) (1) through (7).)

** Same sharing arrangement as the contract's profit or fee adjustment formula.

*** The contracting officer may increase the contractor's sharing rate to as high as 50 percent for each VECP. (See 48.102(g) (1) through (7).)

(2) Acquisition savings may be realized on the instant contract, concurrent contracts, and future contracts. The contractor is entitled to a percentage share (see paragraph (a)(1)) of any net acquisition savings. Net acquisition savings result when the total of acquisition savings becomes greater than the total of Government costs and any negative instant contract savings. This may occur on the instant contract or it may not occur until reductions have been negotiated on concurrent contracts or until future contract savings are calculated, either through lump-sum payment or as each future contract is awarded.

(i) When the instant contract is not an incentive contract, the contractor's share of net acquisition savings is calculated and paid each time such savings are realized. This may occur once, several times, or, in rare cases, not at all.

(ii) When the instant contract is an incentive contract, the contractor shares in instant contract savings through the contract's incentive structure. In calculating acquisition savings under incentive contracts, the contracting officer shall add any negative instant contract savings to the target cost or

to the target price and ceiling price and then offset these negative instant contract savings and any Government costs against concurrent and future contract savings.

(3) The contractor shares in the savings on all affected units scheduled for delivery during the sharing period. The contractor is responsible for maintaining, for 3 years after final payment on the contract under which the VECP was accepted, records adequate to identify the first delivered unit incorporating the applicable VECP.

(4) Contractor shares of savings are paid through the contract under which the VECP was accepted. On incentive contracts, the contractor's share of concurrent and future contract savings and of collateral savings shall be paid as a separate firm-fixed-price contract line item on the instant contract.

(5) Within 3 months after concurrent contracts have been modified to reflect price reductions attributable to use of the VECP, the contracting officer shall modify the instant contract to provide the contractor's share of savings.

(6) The contractor's share of future contract savings may be paid as subsequent contracts are awarded or in a lump-sum payment at the time the VECP is accepted. The lump-sum method may be used only if the contracting officer has established that this is the best way to proceed and the contractor agrees. The contracting officer ordinarily shall make calculations as future contracts are awarded and, within 3 months after award, modify the instant contract to provide the contractor's share of the savings. For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the contracting officer will purchase for delivery during the sharing period. In deciding whether or not to use the more convenient lump-sum method for an individual VECP, the contracting officer shall consider—

(i) The accuracy with which the number of items to be delivered during the sharing period can be estimated and the probability of actual production of the projected quantity;

(ii) The availability of funds for a lump-sum payment; and

(iii) The administrative expense of amending the instant contract as future contracts are awarded.

(b) *Construction contracts.* Sharing on construction contracts applies only to savings on the instant contract and to collateral savings. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts or (2) 75 percent for cost-reimbursement contracts. Value engineering sharing does not apply to incentive construction contracts.

48.104-3 Sharing collateral savings.

(a) The Government shares collateral savings with the contractor, unless the head of the contracting activity has deter-

mined that the cost of calculating and tracking collateral savings will exceed the benefits to be derived (see 48.201(e)).

(b) The contractor's share of collateral savings may range from 20 to 100 percent of the estimated savings to be realized during a typical year of use but must not exceed the greater of—

(1) The contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted; or
(2) \$100,000.

(c) The contracting officer must determine the sharing rate for each VECP.

(d) In determining collateral savings, the contracting officer must consider any degradation of performance, service life, or capability.

48.104-4 Sharing alternative—no-cost settlement method.

In selecting an appropriate mechanism for incorporating a VECP into a contract, the contracting officer shall analyze the different approaches available to determine which one would be in the Government's best interest. Contracting officers should balance the administrative costs of negotiating a settlement against the anticipated savings. A no-cost settlement

may be used if, in the contracting officer's judgment, reliance on other VECP approaches likely would not be more cost-effective, and the no-cost settlement would provide adequate consideration to the Government. Under this method of settlement, the contractor would keep all of the savings on the instant contract, and all savings on its concurrent contracts only. The Government would keep all savings resulting from concurrent contracts placed with other sources, savings from all future contracts, and all collateral savings. Use of this method must be by mutual agreement of both parties for individual VECPs.

48.105 Relationship to other incentives.

Contractors should be offered the fullest possible range of motivation, yet the benefits of an accepted VECP should not be rewarded both as value engineering shares and under performance, design-to-cost, or similar incentives of the contract. To that end, when performance, design-to-cost, or similar targets are set and incentivized, the targets of such incentives affected by the VECP are not to be adjusted because of the acceptance of the VECP. Only those benefits of an accepted VECP not rewardable under other incentives are rewarded under a value engineering clause.

Subpart 48.2—Contract Clauses

48.201 Clauses for supply or service contracts.

(a) *General.* The contracting officer shall insert a value engineering clause in solicitations and contracts when the contract amount is expected to be \$100,000 or more, except as specified in paragraphs (a)(1) through (5) and in paragraph (f) of this section. A value engineering clause may be included in contracts of lesser value if the contracting officer sees a potential for significant savings. Unless the chief of the contracting office authorizes its inclusion, the contracting officer shall not include a value engineering clause in solicitations and contracts—

(1) For research and development other than full-scale development;

(2) For engineering services from not-for-profit or non-profit organizations;

(3) For personal services (see Subpart 37.1);

(4) Providing for product or component improvement, unless the value engineering incentive application is restricted to areas not covered by provisions for product or component improvement;

(5) For commercial products (see Part 11) that do not involve packaging specifications or other special requirements or specifications; or

(6) When the agency head has exempted the contract (or a class of contracts) from the requirements of this Part 48.

(b) *Value engineering incentive.* To provide a value engineering incentive, the contracting officer shall insert the clause at 52.248-1, Value Engineering, in solicitations and contracts except as provided in paragraph (a) of this section (but see paragraph (e)(1) of this section).

(c) *Value engineering program requirement.* (1) If a mandatory value engineering effort is appropriate (*i.e.*, if the contracting officer considers that substantial savings to the Government may result from a sustained value engineering effort of a specified level), the contracting officer shall use the clause with its Alternate I (but see paragraph (e)(2) of this section).

(2) The value engineering program requirement may be specified by the Government in the solicitation or, in the case of negotiated contracting, proposed by the contractor as part of its offer and included as a subject for negotiation. The program requirement shall be shown as a separately priced line item in the contract Schedule.

(d) *Value engineering incentive and program requirement.*

(1) If both a value engineering incentive and a mandatory program requirement are appropriate, the contracting officer shall use the clause with its Alternate II (but see paragraph (e)(3) of this section).

(2) The contract shall restrict the value engineering program requirement to well-defined areas of performance designated by line item in the contract Schedule. Alternate II applies a value engineering program to the specified areas and a value engineering incentive to the remaining areas of the contract.

(e) *Collateral savings computation not cost-effective.* If the head of the contracting activity determines for a contract or class of contracts that the cost of computing and tracking collateral savings will exceed the benefits to be derived, the contracting officer shall use the clause with its—

(1) Alternate III if a value engineering incentive is involved;

(2) Alternate III and Alternate I if a value engineering program requirement is involved; or

(3) Alternate III and Alternate II if both an incentive and a program requirement are involved.

(f) *Architect-engineer contracts.* The contracting officer shall insert the clause at 52.248-2, Value Engineering Architect-Engineer, in solicitations and contracts whenever the Government requires and pays for a specific value engineering effort in architect-engineer contracts. The clause at 52.248-1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

(g) *Engineering-development solicitations and contracts.* For engineering-development solicitations and contracts, and solicitations and contracts containing low-rate-initial-production or early production units, the contracting officer must modify the clause at 52.248-1, Value Engineering, by—

(1) Revising paragraph (i)(3)(i) of the clause by substituting “a number equal to the quantity required to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted;” for “the number of future contract units scheduled for delivery during the sharing period;” and

(2) Revising the first sentence under paragraph (3) of the definition of “acquisition savings” by substituting “a number equal to the quantity to be delivered over a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the highest planned production, based on planning and programming or production documentation at the time the VECP is accepted.” for “the number of future contract units in the sharing base.”

(h) *Extended production period solicitations and contracts.* In solicitations and contracts for items requiring an extended period for production (*e.g.*, ship construction, major system acquisition), if agency procedures prescribe sharing of future contract savings on all units to be delivered under contracts awarded during the sharing period (see 48.104-1(c)), the contracting officer must modify the clause at 52.248-1,

Value Engineering, by revising paragraph (i)(3)(i) of the clause and the first sentence under paragraph (3) of the definition of “acquisition savings” by substituting “under contracts awarded during the sharing period” for “during the sharing period.”

48.202 Clause for construction contracts.

The contracting officer shall insert the clause at 52.248-3, Value Engineering—Construction, in construction solicitations and contracts when the contract amount is estimated to

be \$100,000 or more, unless an incentive contract is contemplated. The contracting officer may include the clause in contracts of lesser value if the contracting officer sees a potential for significant savings. The contracting officer shall not include the clause in incentive-type construction contracts. If the head of the contracting activity determines that the cost of computing and tracking collateral savings for a contract will exceed the benefits to be derived, the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 49—TERMINATION OF CONTRACTS

Sec.

- 49.000 Scope of part.
 - 49.001 Definitions.
 - 49.002 Applicability.
- Subpart 49.1—General Principles**
- 49.100 Scope of subpart.
 - 49.101 Authorities and responsibilities.
 - 49.102 Notice of termination.
 - 49.103 Methods of settlement.
 - 49.104 Duties of prime contractor after receipt of notice of termination.
 - 49.105 Duties of termination contracting officer after issuance of notice of termination.
 - 49.105-1 Termination status reports.
 - 49.105-2 Release of excess funds.
 - 49.105-3 Termination case file.
 - 49.105-4 Cleanup of construction site.
 - 49.106 Fraud or other criminal conduct.
 - 49.107 Audit of prime contract settlement proposals and subcontract settlements.
 - 49.108 Settlement of subcontract settlement proposals.
 - 49.108-1 Subcontractor's rights.
 - 49.108-2 Prime contractor's rights and obligations.
 - 49.108-3 Settlement procedure.
 - 49.108-4 Authorization for subcontract settlements without approval or ratification.
 - 49.108-5 Recognition of judgments and arbitration awards.
 - 49.108-6 Delay in settling subcontractor settlement proposals.
 - 49.108-7 Government assistance in settling subcontracts.
 - 49.108-8 Assignment of rights under subcontracts.
 - 49.109 Settlement agreements.
 - 49.109-1 General.
 - 49.109-2 Reservations.
 - 49.109-3 Government property.
 - 49.109-4 No-cost settlement.
 - 49.109-5 Partial settlements.
 - 49.109-6 Joint settlement of two or more settlement proposals.
 - 49.109-7 Settlement by determination.
 - 49.110 Settlement negotiation memorandum.
 - 49.111 Review of proposed settlements.
 - 49.112 Payment.
 - 49.112-1 Partial payments.
 - 49.112-2 Final payment.
 - 49.113 Cost principles.
 - 49.114 Unsettled contract changes.
 - 49.115 Settlement of terminated incentive contracts.
- Subpart 49.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience**
- 49.201 General.
 - 49.202 Profit.
 - 49.203 Adjustment for loss.
 - 49.204 Deductions.
 - 49.205 Completed end items.
 - 49.206 Settlement proposals.
 - 49.206-1 Submission of settlement proposals.
 - 49.206-2 Bases for settlement proposals.
 - 49.206-3 Submission of inventory schedules.
 - 49.207 Limitation on settlements.
 - 49.208 Equitable adjustment after partial termination.
- Subpart 49.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience**
- 49.301 General.
 - 49.302 Discontinuance of vouchers.
 - 49.303 Procedure after discontinuing vouchers.
 - 49.303-1 Submission of settlement proposal.
 - 49.303-2 Submission of inventory schedules.
 - 49.303-3 Audit of settlement proposal.
 - 49.303-4 Adjustment of indirect costs.
 - 49.303-5 Final settlement.
 - 49.304 Procedure for partial termination.
 - 49.304-1 General.
 - 49.304-2 Submission of settlement proposal (fee only).
 - 49.304-3 Submission of vouchers.
 - 49.305 Adjustment of fee.
 - 49.305-1 General.
 - 49.305-2 Construction contracts.
- Subpart 49.4—Termination for Default**
- 49.401 General.
 - 49.402 Termination of fixed-price contracts for default.
 - 49.402-1 The Government's right.
 - 49.402-2 Effect of termination for default.
 - 49.402-3 Procedure for default.
 - 49.402-4 Procedure in lieu of termination for default.
 - 49.402-5 Memorandum by the contracting officer.
 - 49.402-6 Repurchase against contractor's account.
 - 49.402-7 Other damages.
 - 49.403 Termination of cost-reimbursement contracts for default.
 - 49.404 Surety-takeover agreements.
 - 49.405 Completion by another contractor.
 - 49.406 Liquidation of liability.
- Subpart 49.5—Contract Termination Clauses**
- 49.501 General.
 - 49.502 Termination for convenience of the Government.
 - 49.503 Termination for convenience of the Government and default.
 - 49.504 Termination of fixed-price contracts for default.
 - 49.505 Other termination clauses.

Subpart 49.6—Contract Termination Forms and Formats

- 49.601 Notice of termination for convenience.
- 49.601-1 Telegraphic notice.
- 49.601-2 Letter notice.
- 49.602 Forms for settlement of terminated contracts.
- 49.602-1 Termination settlement proposal forms.
- 49.602-2 Inventory schedule forms.
- 49.602-3 Schedule of accounting information.
- 49.602-4 Partial payments.
- 49.602-5 Settlement agreement.
- 49.603 Formats for termination for convenience settlement agreements.
- 49.603-1 Fixed price contracts—complete termination.
- 49.603-2 Fixed-price contracts—partial termination.
- 49.603-3 Cost reimbursement contracts—complete termination, if settlement includes cost.
- 49.603-4 Cost-reimbursement contracts—complete termination, with settlement limited to fee.
- 49.603-5 Cost-reimbursement contracts—partial termination.
- 49.603-6 No-cost settlement agreement—complete termination.
- 49.603-7 No-cost settlement agreement—partial termination.
- 49.603-8 Fixed-price contracts—settlements with subcontractors only.
- 49.603-9 Settlement of reservations.
- 49.604 Release of excess funds under terminated contracts.
- 49.605 Request to settle subcontractor settlement proposals.
- 49.606 Granting subcontract settlement authorization.
- 49.607 Delinquency notices.

49.000 Scope of part.

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

49.001 Definitions.

As used in this part—

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

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

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

“Termination inventory” means the same as the language in 45.601.

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

49.002 Applicability.

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

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

(c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under the Changes clause of any contract, except cost-reimbursement contracts.

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

Subpart 49.1—General Principles**49.100 Scope of subpart.**

(a) This subpart deals with—

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

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

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

(4) Settlement agreements.

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

49.101 Authorities and responsibilities.

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

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

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

(2) Government property was not furnished, and

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

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

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

(e) If the same item is under contract with both large and small business concerns and it is necessary to terminate for convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government’s interest.

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

49.102 Notice of termination.

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

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

(2) The effective date of termination;

(3) The extent of termination;

(4) Any special instructions; and

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

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

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

(1) Correct nonsubstantive mistakes in the notice;

(2) Add supplemental data or instructions; or

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

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

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

(2) Reinstatement is advantageous to the Government.

49.103 Methods of settlement.

Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be

effected by (a) negotiated agreement, (b) determination by the TCO, (c) costing-out under vouchers using SF 1034, Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in Subpart 49.3), or (d) a combination of these methods. When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO shall settle a settlement proposal by determination only when it cannot be settled by agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Direct the action required of the prime contractor;
- (2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

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

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

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

- (1) Assist in dealings with the contractor;
- (2) Advise on legal and contractual matters;
- (3) Conduct accounting reviews and advise and assist on accounting matters; and

(4) Perform the following functions regarding termination inventory (see Subpart 45.6):

- (i) Verify its existence.
- (ii) Determine qualitative and quantitative allocability.
- (iii) Make recommendations concerning serviceability.
- (iv) Undertake necessary screening and redistribution.
- (v) Assist the contractor in accomplishing other disposition.

(c) The TCO should promptly hold a conference with the contractor to develop a definite program for effecting the settlement. When appropriate in the judgment of the TCO, after consulting with the contractor, principal subcontractors should be requested to attend. Topics that should be discussed at the conference and documented include—

(1) General principles relating to the settlement of any settlement proposal, including obligations of the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information that would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settling subcontractor settlement proposals;

(5) Names of subcontractors involved and the dates termination notices were issued to them;

(6) Contractor personnel handling review and settlement of subcontractor settlement proposals and the methods being used;

(7) Arrangements for transfer of title and delivery to the Government of any material required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of the contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and preparation of SF-1439 (Schedule of Accounting Information (49.602-3));

(10) Form in which to submit settlement proposals;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments;

(13) Tentative time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules (see 49.206-3 and 49.303-2);

(14) Actions taken by the contractor to minimize impact upon employees affected adversely by the termination (see paragraph (g) of the letter notice in 49.601-2); and

(15) Obligation of the contractor to furnish accurate, complete, and current cost or pricing data, and to certify to that effect in accordance with 15.403-4(a)(1) when the amount of a termination settlement agreement, or a partial termination settlement agreement plus the estimate to complete the continued portion of the contract exceeds the threshold in 15.403-4.

49.105-1 Termination status reports.

When the TCO and contracting officer are in different activities, the TCO will furnish periodic status reports on termination actions to the contracting office upon request. The contracting office shall specify the information required.

49.105-2 Release of excess funds.

(a) The TCO shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer. The initial deobligation of excess funds should be accomplished in a timely manner by the contracting officer, or the TCO, if delegated the responsibility. The TCO shall not recommend the release of amounts under \$1,000, unless requested by the contracting officer.

(b) The TCO shall maintain continuous surveillance of required funds to permit timely release of any additional excess funds (a recommended format for release of excess funds is in 49.604). If previous releases of excess funds result in a shortage of the amount required for settlement, the TCO shall promptly inform the contracting officer, who shall restate the funds within 30 days.

49.105-3 Termination case file.

The TCO responsible for negotiating the final settlement shall establish a separate case file for each termination. This file will include memoranda and records of all actions relative to the settlement (see 4.801).

49.105-4 Cleanup of construction site.

In the case of terminated construction contracts, the contracting officer shall direct action to ensure the cleanup of the site, protection of serviceable materials, removal of hazards, and other action necessary to leave a safe and healthful site.

49.106 Fraud or other criminal conduct.

If the TCO suspects fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts under agency procedures.

49.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) The TCO shall refer each prime contractor settlement proposal of \$100,000 or more to the GPO Inspector General for review and recommendations. The TCO may submit settlement proposals of less than \$100,000 to the IG. Referrals shall indicate any specific information or data that the TCO desires and shall include facts and circumstances that will assist the audit agency in performing its function. The IG shall develop requested information and may make any further accounting reviews it considers appropriate. After its review, the IG shall submit written comments and recommendations to the TCO. When a formal examination of settlement proposals under \$100,000 is not warranted, the TCO will perform or have performed a desk review and include a written summary of the review in the termination case file.

(b) The TCO shall refer subcontract settlements received for approval or ratification to the IG for review and recommendations when (1) the amount exceeds \$100,000 or (2) the TCO wants a complete or partial accounting review. The IG shall submit written comments and recommendations to the TCO. The review by the IG does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review.

(c)(1) The responsibility of the prime contractor and of each subcontractor (see 49.108) includes performance of accounting reviews and any necessary field audits. However, the TCO should request the Government audit agency to perform the accounting review of a subcontractor's settlement proposal when—

(i) A subcontractor objects, for competitive reasons, to an accounting review of its records by an upper tier contractor;

(ii) The Government audit agency is currently performing audit work at the subcontractor's plant, or can perform the audit more economically or efficiently;

(iii) Audit by the Government is necessary for consistent audit treatment and orderly administration; or

(iv) The contractor has a substantial or controlling financial interest in the subcontractor.

(2) The Inspector General should avoid duplication of accounting reviews performed by the upper tier contractor on subcontractor settlement proposals. However, this should not preclude the Government from making additional reviews when appropriate. When the contractor is performing accounting reviews according to this section, the TCO should request the audit agency to periodically examine the contractor's accounting review procedures and performance, and to make appropriate comments and recommendations to the TCO.

(d) The audit report is advisory only, and is for the TCO to use in negotiating a settlement or issuing a unilateral determination. Government personnel handling audit reports must be careful not to reveal privileged information or information that will jeopardize the negotiation position of the Government, the prime contractor, or a higher tier subcontractor. Consistent with this, and when in the Government's interest, the TCO may furnish audit reports under paragraph (c) of this section to prime and higher tier subcontractors for their use in settling subcontract settlement proposals.

49.108 Settlement of subcontract settlement proposals.**49.108-1 Subcontractor's rights.**

A subcontractor has no contractual rights against the Government upon the termination of a prime contract. A subcontractor may have rights against the prime contractor or intermediate subcontractor with whom it has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the settlement proposals of their immediate subcontractors.

49.108-2 Prime contractor's rights and obligations.

(a) Termination for convenience clauses provide that after receipt of a termination notice the prime contractor shall, unless directed otherwise by the TCO, terminate all subcontracts to the extent that they relate to the performance of prime work terminated. Therefore, prime contractors should include a termination clause in their subcontracts for their own protection. Suggestions regarding use of subcontract termination clauses are in Subpart 49.5.

(b) The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise the clause rights, shall not—

(1) Affect the Government's right to require the termination of the subcontract; or

(2) Increase the obligation of the Government beyond what it would have been if the subcontract had contained an appropriate clause.

(c) In any case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount due under paragraph (f) of the subcontract termination clause suggested in 49.502(e). The TCO shall allow reimbursement in excess of that amount only in unusual cases and then only to the extent that the terms of the subcontract did not unreasonably increase the rights of the subcontractor.

49.108-3 Settlement procedure.

(a) Contractors shall settle with subcontractors in general conformity with the policies and principles relating to settlement of prime contracts in this subpart and Subparts 49.2 or 49.3. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each settlement must be supported by accounting data and other information sufficient for adequate review by the Government. In no event will the Government pay the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see 49.108-5).

(b) Except as provided in 49.108-4, the TCO shall require that—

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with Part 45; and

(2) The prime contractor submit, for approval or ratification, all termination settlements with subcontractors.

(c) The TCO shall promptly examine each subcontract settlement received to determine that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see 49.002(b)). The TCO will also determine if the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the TCO shall generally be guided by the provisions of this part relating to the settlement of prime contracts, and shall comply with any applicable requirements of 49.107 and 49.111 relating to accounting and other reviews. After the examination, the TCO shall notify the contractor in writing of—

(1) Approval or ratification, or

(2) The reasons for disapproval.

49.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1) The TCO may, upon written request, give written authorization to the prime contractor to conclude settlements

of subcontracts terminated in whole or in part without approval or ratification when the amount of settlement (see 49.002(d)) is \$100,000 or less, if—

(i) The TCO is satisfied with the adequacy of the procedures used by the contractor in settling settlement proposals, including proposals for retention, sale, or other disposal of termination inventory of the immediate and lower tier subcontractors (the TCO shall obtain the advice and recommendations of—

(A) The appropriate audit agency relating to the adequacy of the contractor's audit administration, including personnel, and

(B) The cognizant plant clearance officer relating to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of as directed by the prime contractor, generally using the requirements of 45.614, except that the disposition of the inventory shall not—

(A) Be subject to review by the TCO under 49.108-3(c) or 45.607, or

(B) Be subject to the screening requirements in 45.608; and

(iii) A certificate similar to the certificate in the settlement proposal form in 49.602-1(a) will accompany the settlement.

(2) Except as provided in paragraph (a)(4) of this section, authority granted to a prime contractor under paragraph (a)(1) of this section by any TCO shall apply to all Executive agencies' prime contracts that are terminated, or modified by change orders.

(3) Except as provided in paragraph (a)(4) of this section, the TCO shall accept, as part of the prime contractor's settlement proposal, settlements of terminated lower tier subcontracts concluded by any of the prime contractor's immediate or lower tier subcontractors who have been granted authority as prime contractors to settle subcontracts; provided, that the settlement is within the limit of the authority. Authorization to settle proposals of lower tier subcontractors shall not be granted directly to subcontractors. However, a prime contractor authorized to approve subcontractor settlements may also exercise this authority in its capacity as a subcontractor, with respect to its terminated subcontracts and orders. When exercising this authority as a subcontractor, the contractor shall notify the purchaser.

(4) The provisions of paragraphs (a)(1), (2), and (3) of this section shall not apply to contracts under the administration of any contracting officer if the contracting officer so notifies the prime contractor concerned. This notice shall

(i) Be in writing, and

(ii) If paragraph (a)(3) of this section is involved, specify any subcontractor affected.

(b) Section 45.614 shall apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 or 45.607, and without screening under 45.608, if the total amount (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this subsection.

(c) A TCO granting the authorization in paragraph (a)(1) of this section shall periodically (at least annually) make a selective review of settlements and settlement procedures to determine if the contractor is making adequate reviews and fair settlements, and whether the authorization should remain in effect. The TCO shall obtain the advice and recommendations of the appropriate audit agency and the cognizant plant clearance officer. When it is determined that the contractor's procedures are not adequate, or that improper settlements are being made, or when the authority has not been used in the preceding 2 years, the TCO shall revoke the authorization by written notice to the contractor, effective on the date of receipt.

(d) The contractor may make any number of separate settlements with a single subcontractor but shall not divide settlement proposals solely to bring them under an authorization limit. Separate settlement proposals that would normally be included in a single proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated whenever possible.

(e) Upon written request of the contractor, the TCO may increase an authorization granted under paragraph (a)(1) of this subsection to authorize the contractor to conclude settlements under a particular prime contract. The TCO may limit the increased authorization to specific subcontracts or classes of subcontracts.

(f) Authorizations granted under this 49.108-4 shall not authorize the settlement of requisitions or orders placed with any unit within the contractor's corporate entity.

(g) Recommended formats for a request to settle subcontractor settlement proposals and the TCO's letter of authorization to the contractor are in 49.605 and 49.606, respectively.

49.108-5 Recognition of judgments and arbitration awards.

(a) When a subcontractor obtains a final judgment against a prime contractor, the TCO shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the contractor, to the extent the judgment is properly allocable to the terminated portion of the prime contract, if—

(1) The prime contractor has made reasonable efforts to include in the subcontract a termination clause described in 49.502(e), 49.503(c), or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor made reasonable efforts to settle the settlement proposal of the subcontractor;

(4) The contractor gave prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and did not refuse to give the Government control of the defense of the proceedings; and

(5) The contractor diligently defended the suit or, if the Government assumed control of the defense of the proceedings, rendered reasonable assistance requested by the Government.

(b) If the conditions in paragraphs (a)(1) through (5) of this section are not all met, the TCO may allow the contractor the part of the judgment considered fair for settling the subcontract settlement proposal, giving due regard to the policies in this part for settlement of proposals.

(c) When a contractor and a subcontractor submit the subcontractor's settlement proposal to arbitration under any applicable law or contract provision, the TCO shall recognize the arbitration award as the cost of settling the proposal of the contractor to the same extent and under the same conditions as in paragraphs (a) and (b) of this section.

49.108-6 Delay in settling subcontractor settlement proposals.

When a prime contractor's inability to settle with a subcontractor delays the settlement of the prime contract, the TCO may settle with the prime contractor. The TCO shall except the subcontractor settlement proposal from the settlement in whole or part and reserve the rights of the Government and the prime contractor with respect to the subcontractor proposal.

49.108-7 Government assistance in settling subcontracts.

In unusual cases the TCO may determine, with the consent of the prime contractor, that it is in the Government's interest to provide assistance to the prime contractor in the settlement of a particular subcontract. In these situations, the Government, the prime contractor, and a subcontractor may enter into an agreement covering the settlement of one or more subcontracts. In these settlements, the subcontractor shall be paid through the prime contractor as part of the overall settlement with the prime contractor.

49.108-8 Assignment of rights under subcontracts.

(a) The termination for convenience clauses in 52.249, except the short-form clauses, obligate the prime contractor to assign to the Government, as directed by the TCO, all rights, titles, and interest under any subcontract terminated because of termination of the prime contract. The TCO shall

not require the assignment unless it is in the Government's interest.

(b) The termination for convenience clauses (except the short-form clauses) also provide the Government the right, in its discretion, to settle and pay any settlement proposal arising out of the termination of subcontracts. This right does not obligate the Government to settle and pay settlement proposals of subcontractors. As a general rule, the prime contractor is obligated to settle and pay these proposals. However, when the TCO determines that it is in the Government's interest, the TCO shall, after notifying the contractor, settle the subcontractor's proposal using the procedures for settlement of prime contracts. An example in which the Government's interest would be served is when a subcontractor is a sole source and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's proposal will jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

49.109 Settlement agreements.

49.109-1 General.

When a termination settlement has been negotiated and all required reviews have been obtained, the contractor and the TCO shall execute a settlement agreement on Standard Form 30 (Amendment of Solicitation/Modification of Contract) (see 49.603). The settlement shall cover—

- (a) Any setoffs that the Government has against the contractor that may be applied against the terminated contract and
- (b) All settlement proposals of subcontractors, except proposals that are specifically excepted from the agreement and reserved for separate settlement.

49.109-2 Reservations.

(a) The TCO shall—

- (1) Reserve in the settlement agreement any rights or demands of the parties that are excepted from the settlement;
 - (2) Ensure that the wording of the reservation does not create any rights for the parties beyond those in existence before execution of the settlement agreement;
 - (3) Mark each applicable settlement agreement with "This settlement agreement contains a reservation" and retain the contract file until the reservation is removed;
 - (4) Ensure that sufficient funds are retained to cover complete settlement of the reserved items; and
 - (5) At the appropriate time, prepare a separate settlement of reserved items and include it in a separate settlement agreement.
- (b) A recommended format for settlement of reservations appears in 49.603-9.

49.109-3 Government property.

Before execution of a settlement agreement, the TCO shall determine the accuracy of the Government property account for the terminated contract. If an audit discloses property for which the contractor cannot account, the TCO shall reserve in the settlement agreement the rights of the Government regarding that property or make an appropriate deduction from the amount otherwise due the contractor.

49.109-4 No-cost settlement.

The TCO shall execute a no-cost settlement agreement (see 49.603-6 or 49.603-7, as applicable) if—

- (a) The contractor has not incurred costs for the terminated portion of the contract or
- (b) The contractor is willing to waive the costs incurred and
- (c) No amounts are due the Government under the contract.

49.109-5 Partial settlements.

The TCO should attempt to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, the TCO shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a TCO cannot promptly complete settlement under the terminated contract, a partial settlement may be entered into if—

- (a) The issues on which agreement has been reached are clearly severable from other issues and
- (b) The partial settlement will not prejudice the Government's or contractor's interests in disposing of the unsettled part of the settlement proposal.

49.109-6 Joint settlement of two or more settlement proposals.

(a) With the consent of the contractor, the TCO or TCO's concerned may negotiate jointly two or more termination settlement proposals of the same contractor under different contracts, even though the contracts are with different contracting offices or agencies. In such cases, accounting work shall be consolidated to the greatest extent practical. The resulting settlement may be evidenced by one settlement agreement covering all contracts involved or by a separate agreement for each contract involved.

(b) When the settlement agreement covers more than one contract, it shall—

- (1) Clearly identify the contracts involved,
- (2) Assign an amendment modification number to each contract,
- (3) Apportion the total amount of the settlement among the several contracts on some reasonable basis,

(4) Have attached or incorporated a schedule showing the apportionment, and

(5) Be distributed and attached to each contract involved in the same manner as other contract modifications.

49.109-7 Settlement by determination.

(a) *General.* If the contractor and TCO cannot agree on a termination settlement, or if a settlement proposal is not submitted within the period required by the termination clause, the TCO shall issue a determination of the amount due consistent with the termination clause, including any cost principles incorporated by reference. The TCO shall comply with 49.109-1 through 49.109-6 in making a settlement by determination and with 49.203 in making an adjustment for loss, if any. Copies of determinations shall receive the same distribution as other contract modifications.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the TCO shall give the contractor at least 15 days notice by certified mail (return receipt requested) to submit written evidence, so as to reach the TCO on or before a stated date, substantiating the amount previously proposed.

(c) *Justification of settlement proposal.* (1) The contractor has the burden of establishing, by proof satisfactory to the TCO, the amount proposed.

(2) The contractor may submit vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents as desired. The TCO may request the contractor to submit additional documents and data, and may request appropriate accountings, investigations, and audits.

(3) The TCO may accept copies of documents and records without requiring original documents unless there is a question of authenticity.

(4) The TCO may hold any conferences considered appropriate—

(i) To confer with the contractor,

(ii) To obtain additional information from Government personnel or from independent experts, or

(iii) To consult persons who have submitted affidavits or reports.

(d) *Determinations.* After reviewing the information available, the TCO shall determine the amount due and shall transmit a copy of the determination to the contractor by certified mail (return receipt requested), or by any other method that provides evidence of receipt. The transmittal letter shall advise the contractor that the determination is a final decision from which the contractor may appeal under the Disputes clause, except as shown in paragraph (f) of this section. The determination shall specify the amount due the contractor and will be supported by detailed schedules conforming generally to the forms for settlement proposals prescribed in 49.602-1 and by additional information, schedules, and analyses as

appropriate. The TCO shall explain each major item of disallowance. The TCO need not reconsider any other action relating to the terminated portion of the contract that was ratified or approved by the TCO or another contracting officer.

(e) *Preservation of evidence.* The TCO shall retain all written evidence and other data relied upon in making a determination, except that copies of original books of account need not be made. The TCO shall return books of account, together with other original papers and documents, to the contractor within a reasonable time.

(f) *Appeals.* The contractor may appeal, under the Disputes clause, any settlement by determination, except when the contractor has failed to submit the settlement proposal within the time provided in the contract and failed to request an extension of time. The pendency of an appeal shall not affect the authority of the TCO to settle the settlement proposal or any part by negotiation with the contractor at any time before the appeal is decided.

(g) *Decision on the contractor's appeal.* The TCO shall give effect to a decision of the Court of Federal Claims or a board of contract appeals, when necessary, by an appropriate modification to the contract. When appropriate, the TCO should obtain a release from the contractor. TCO's are authorized to modify the formats of settlement agreements in 49.603 to agree with this provision.

49.110 Settlement negotiation memorandum.

(a) The TCO shall, at the conclusion of negotiations, prepare a settlement negotiation memorandum describing the principal elements of the settlement for inclusion in the termination case file and for use by reviewing authorities. Pricing aspects of the settlement shall be documented in accordance with 15.406-3. The memorandum shall be distributed in accordance with 15.406-3.

(b) If the settlement was negotiated on the basis of individual items, the TCO shall specify the factors considered for each item. If the settlement was negotiated on an overall lump-sum basis, the TCO need not evaluate each item or group of items individually, but shall support the total amount of the recommended settlement in reasonable detail. The memorandum shall include explanations of matters involving differences and doubtful questions settled by agreement, and the factors considered. The TCO should include any other matters that will assist reviewing authorities in understanding the basis for the settlement.

49.111 Review of proposed settlements.

Each agency shall establish procedures, when necessary, for the administrative review of proposed termination settlements. When one agency provides termination settlement services for another agency, the agency providing the services shall also perform the settlement review function.

49.112 Payment.**49.112-1 Partial payments.**

(a) *General.* If the contract authorizes partial payments on settlement proposals before settlement, a prime contractor may request them on the form prescribed in 49.602-4 at any time after submission of interim or final settlement proposals. The Government will process applications for partial payments promptly. A subcontractor shall submit its application through the prime contractor which shall attach its own invoice and recommendations to the subcontractor's application. Partial payments to a subcontractor shall be made only through the prime contractor and only after the prime contractor has submitted its interim or final settlement proposal. Except for undelivered acceptable finished products, partial payments shall not be made for profit or fee claimed under the terminated portion of the contract. In exercising discretion on the extent of partial payments to be made, the TCO shall consider the diligence of the contractor in settling with subcontractors and in preparing its own settlement proposal.

(b) *Amount of partial payment.* Before approving any partial payment, the TCO shall obtain any desired accounting, engineering, or other specialized reviews of the data submitted in support of the contractor's settlement proposal. If the reviews and the TCO's examination of the data indicate that the requested partial payment is proper, reasonable payments may be authorized in the discretion of the TCO up to—

(1) 100 percent of the contract price, adjusted for undelivered acceptable items completed before the termination date, or later completed with the approval of the TCO (see 49.205);

(2) 100 percent of the amount of any subcontract settlement paid by the prime contractor if the settlement was approved or ratified by the TCO under 49.108-3(c) or was authorized under 49.108-4;

(3) 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) 90 percent of other allowable costs (including settlement expense and manufacturing and administrative indirect costs) allocable to the terminated portion of the contract and not included in paragraphs (b)(1), (2), or (3) of this section; and

(5) 100 percent of partial payments made to subcontractors under this section.

(c) *Recognition of assignments.* When an assignment of claims has been made under the contract, the Government shall not make partial payments to other than the assignee unless the parties to the assignment consent in writing (see 32.805(e)).

(d) *Security for partial payments.* If any partial payment is made for completed end items or for costs of termination inventory, the TCO shall protect the Government's interest.

This shall be done by obtaining title to the completed end items or termination inventory, or by the creation of a lien in favor of the Government, paramount to all other liens, on the completed end items or termination inventory, or by other appropriate means.

(e) *Deductions in computing amount of partial payments.* The TCO shall deduct from the gross amount of any partial payment otherwise payable under 49.112-1(b)—

(1) All unliquidated balances of progress and advance payments (including interest) made to the contractor, which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property, the costs of which are included in the application for payment.

(f) *Limitation on total amount.* The total amount of all partial payments shall not exceed the amount that will, in the opinion of the TCO, become due to the contractor because of the termination.

(g) *Effect of overpayment.* If the total of partial payments exceeds the amount finally determined due on the settlement proposal, the contractor shall repay the excess to the Government on demand, together with interest. The interest shall be computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2) from the date the excess payment was received by the contractor to the date of repayment. However, interest will not be charged for any—

(1) Excess payment attributable to a reduction in the 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 TCO, or

(2) Overpayment under cost-reimbursement research and development contracts without profit or fee if the overpayments are repaid to the Government within 30 days after demand.

(h) *Certification and approval of partial payments.*

(1) The contractor shall place the following certification on vouchers or invoices for partial payments:

The payment covered by this voucher is a partial payment on the Contractor's settlement proposal under contract No. _____ under Part 49 of the Federal Acquisition Regulation.

(2) The TCO shall approve the invoice or voucher by noting on it the following:

Payment of \$ _____ is approved.

49.112-2 Final payment.

(a) *Negotiated settlement.* After execution of a settlement agreement, the contractor shall submit a voucher or invoice showing the amount agreed upon, less any portion previously paid. The TCO shall attach a copy of the settlement agreement

to the voucher or invoice and forward the documents to the disbursing officer for payment.

(b) *Settlement by determination.* If the settlement is by determination and—

(1) There is no appeal within the allowed time, the contractor shall submit a voucher or invoice showing the amount determined due, less any portion previously paid; or

(2) There is an appeal, the contractor shall submit a voucher or invoice showing the amount finally determined due on the appeal, less any portion previously paid. Pending determination of any appeal, the contractor may submit vouchers or invoices for charges that are not directly involved with the portion being appealed, without prejudice to the rights of either party on the appeal.

(c) *Construction contracts.* In the case of construction contracts, before forwarding the final payment voucher, the contracting officer shall ascertain whether there are any outstanding labor violations. If so, the contracting officer shall determine the amount to be withheld from the final payment (see Subpart 22.4).

(d) *Interest.* The Government shall not pay interest on the amount due under a settlement agreement or a settlement by determination. The Government may, however, pay interest on a successful contractor appeal from a contracting officer's determination under the Disputes clause at 52.233-1.

49.113 Cost principles.

The cost principles and procedures in the applicable subpart of Part 31 shall, subject to the general principles in 49.201—

(a) Be used in asserting, negotiating, or determining costs relevant to termination settlements under contracts with other than educational institutions, and

(b) Be a guide for the negotiation of settlements under contracts for experimental, developmental, or research work with educational institutions (but see 31.104).

49.114 Unsettled contract changes.

(a) Before settlement of a completely terminated contract, the TCO shall obtain from the contracting office a list of all related unsettled contract changes. The TCO shall settle, as part of final settlement, all unsettled contract changes after obtaining the recommendations of the contracting office concerning the changes.

(b) When the contract has been partially terminated, any outstanding unsettled contract changes will usually be handled by the contracting officer. However, the contracting officer may delegate this function to the TCO.

49.115 Settlement of terminated incentive contracts.

(a) *Fixed-price incentive contracts.* The TCO shall settle terminated fixed-price incentive (FPI) contracts under the provisions of paragraph (j) of the clause at 52.216-16, Incentive Price Revision—Firm Target, and 52.249-2, Termination for Convenience of the Government (Fixed-Price).

(1) *Partial termination.* Under a partially terminated contract, the TCO shall negotiate a settlement as provided in the termination clause of the contract, and paragraph (j) of the clause at 52.216-16, Incentive Price Revision—Firm Target, or paragraph (1) of the clause at 52.216-17, Incentive Price Revision—Successive Targets. The contracting officer shall apply the incentive price revision provisions to completed items accepted by the Government, including any for which the contractor may request reimbursement in the settlement proposal. The TCO shall reimburse the contractor at target price for completed articles included in the settlement proposal for which a final price has not been established. The TCO shall incorporate in the settlement agreement an appropriate reservation as to final price for these completed articles.

(2) *Complete termination.* If any items were delivered and accepted by the Government, the contracting officer shall establish prices under the incentive provisions of the contract. On the terminated portion of the contract, the provisions of the termination clause (see 52.249-2, Termination for Convenience of the Government (Fixed-Price)) shall govern and the provisions of the incentive clause shall not apply. The TCO responsible for the termination settlement will ensure, on the basis of evidence considered proper (including coordination with the contracting officer), that no portion of the costs considered in the negotiations under the incentive provisions are included in the termination settlement.

(b) *Cost-plus-incentive-fee contracts.* The TCO shall settle terminated cost-plus-incentive-fee contracts under the clause at 52.249-6, Termination (Cost-Reimbursement).

(1) *Partial termination.* Under a partial termination, the TCO shall limit the settlement to an adjustment of target fee as provided in paragraph (e) of the clause at 52.216-10, Incentive Fee. The settlement agreement shall include a reservation regarding any adjustment of target cost resulting from the partial termination. The contracting officer shall adjust the target cost, if required.

(2) *Complete termination.* The parties shall negotiate the settlement under the provisions of Subpart 49.3 and the clause at 52.249-6, Termination (Cost Reimbursement). The fee shall be adjusted on the basis of the target fee, and the incentive provisions shall not be applied or considered.

Subpart 49.2—Additional Principles for Fixed-Price Contracts Terminated for Convenience

49.201 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including a reasonable allowance for profit. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting related to the settlement of terminated contracts should be kept to a minimum compatible with the reasonable protection of the public interest.

49.202 Profit.

(a) The TCO shall allow profit on preparations made and work done by the contractor for the terminated portion of the contract but not on the settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see 49.108-5). Profit for the contractor's efforts in settling subcontractor proposals shall not be based on the dollar amount of the subcontract settlement agreements but the contractor's efforts will be considered in determining the overall rate of profit allowed the contractor. Profit shall not be allowed the contractor for material or services that, as of the effective date of termination, have not been delivered by a subcontractor, regardless of the percentage of completion. The TCO may use any reasonable method to arrive at a fair profit.

(b) In negotiating or determining profit, factors to be considered include—

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract (engineering estimates of the percentage of completion ordinarily should not be required, but if available should be considered);

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to—

(i) Attainment of quantity and quality production;

(ii) Reduction of costs;

(iii) Economic use of materials, facilities, and manpower; and

(iv) Disposition of termination inventory;

(4) Amount and source of capital and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit that the contractor would have earned had the contract been completed;

(8) The rate of profit both parties contemplated at the time the contract was negotiated; and

(9) Character and difficulty of subcontracting, including selection, placement, and management of subcontracts, and effort in negotiating settlements of terminated subcontracts.

(c) When computing profit on the terminated portion of a construction contract, the contracting officer shall—

(1) Comply with paragraphs (a) and (b) of this section;

(2) Allow profit on the prime contractor's settlements with construction subcontractors for actual work in place at the job site; and

(3) Exclude profit on the prime contractor's settlements with construction subcontractors for materials on hand and for preparations made to complete the work.

49.203 Adjustment for loss.

(a) In the negotiation or determination of any settlement, the TCO shall not allow profit if it appears that the contractor would have incurred a loss had the entire contract been completed. The TCO shall negotiate or determine the amount of loss and make an adjustment in the amount of settlement as specified in paragraph (b) or (c) of this section. In estimating the cost to complete, the TCO shall consider expected production efficiencies and other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis (see 49.206-2(a)), the contractor shall not be paid more than the total of the amounts in paragraphs (b)(1), (2), and (3) of this section, less all disposal credits and all unliquidated advance and progress payments previously made under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The contract price, as adjusted, for acceptable completed end items (see 49.205).

(3) The remainder of the settlement amount otherwise agreed upon or determined (including the allocable portion of initial costs (see 31.205-42(c)), reduced by multiplying the remainder by the ratio of—

(i) The total contract price to

(ii) The total cost incurred before termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see 49.206-2(b)), the contractor shall not be paid more than the total of the amounts in paragraphs (c)(1) and (2) of this section, less all disposal and other credits, all advance and progress payments, and all other amounts previously paid under the contract:

(1) The amount negotiated or determined for settlement expenses.

(2) The remainder of the total settlement amount otherwise agreed upon or determined (lines 7 and 14 of SF 1436, Settlement Proposal (Total Cost Basis)) reduced by multiplying the remainder by the ratio of—

(i) The total contract price to

(ii) The remainder plus the estimated cost to complete the entire contract.

49.204 Deductions.

From the amount payable to the contractor under a settlement, the TCO shall deduct—

(a) The agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds from any materials sold that have not been paid or credited to the Government;

(b) The fair value, as determined by the TCO, of any part of the termination inventory that, before transfer of title to the Government or to a buyer under Part 45, is destroyed, lost, stolen, or so damaged as to become undeliverable (normal spoilage is excepted, as is inventory for which the Government has expressly assumed the risk of loss); and

(c) Any other amounts as appropriate in the particular case.

49.205 Completed end items.

(a) Promptly after the effective date of termination, the TCO shall (1) have all undelivered completed end items inspected and accepted if they comply with the contract requirements, and (2) determine which accepted end items are to be delivered under the contract. The contractor shall invoice accepted and delivered end items at the contract price in the usual manner and shall not include them in the settlement proposal. When completed end items, though accepted, are not to be delivered under the contract, the contractor shall include them in the settlement proposal at the contract price, adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

(b) Work in place accepted by the Government under a construction contract is not considered a completed item even though that work may have been paid for at unit prices specified in the contract.

49.206 Settlement proposals.

49.206-1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause, the contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination. The final settlement proposal must be submitted within one year from the effective date of the termination, unless the period is extended by the TCO. Termination charges under a single prime contract involving two or more divisions or units of the prime contractor may be consolidated and included in a single settlement proposal.

(b) The settlement proposal must cover all cost elements including settlements with subcontractors and any proposed profit. With the consent of the TCO, proposals may be filed in successive steps covering separate portions of the contractor's costs. Such interim proposals shall include all costs of a particular type, except as the TCO may authorize otherwise.

(c) Settlement proposals must be on the forms prescribed in 49.602 unless the forms are inadequate for a particular contract. Settlement proposals must be in reasonable detail supported by adequate accounting data. Actual, standard (appropriately adjusted), or average costs may be used in preparing settlement proposals if they are determined under generally recognized accounting principles consistently followed by the contractor. When actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the TCO. Contractors shall not be required to maintain unduly elaborate cost accounting systems merely because their contracts may subsequently be terminated.

(d) The contractor may use the Settlement Proposal (Short Form), SF 1438 (see 49.602-1(d) and 53.249), when the total proposal is less than \$10,000, unless otherwise instructed by the TCO. Settlement proposals that would normally be included in a single settlement proposal; *e.g.*, those based on a series of separate orders for the same item under one contract, should be consolidated whenever possible and not divided to bring them below \$10,000.

(e) The Schedule of Accounting Information, SF 1439, must be submitted for each termination under a contract for which a settlement proposal is submitted, except when the Standard Form 1438 is used. Although several interim proposals may be submitted, SF 1439 need be submitted only once unless, subsequent to filing the original form, major changes occur in the information submitted.

49.206-2 Bases for settlement proposals.

(a) *Inventory basis.* (1) Use of the inventory basis for settlement proposals is preferred. Under this basis, the contractor may propose only costs allocable to the terminated portion of the contract, and the settlement proposal must itemize separately—

(i) Metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling, at purchase or manufacturing cost;

(ii) Charges such as engineering costs, initial costs, and general administrative costs;

(iii) Costs of settlements with subcontractors;

(iv) Settlement expenses; and

(v) Other proper charges.

(2) An allowance for profit (49.202) or adjustment for loss (49.203(b)) must be made to complete the gross settlement proposal. All unliquidated advance and progress payments and all disposal and other credits known when the proposal is submitted must then be deducted.

(3) This inventory basis is also appropriate for use under the following circumstances:

(i) The partial termination of a construction or related professional services contract.

(ii) The partial or complete termination of supply orders under any terminated construction contract.

(iii) The complete termination of a unit-price (as distinguished from a lump-sum) professional services contract.

(b) *Total cost basis.* (1) When use of the inventory basis is not practicable or will unduly delay settlement, the total-cost basis (SF 1436) may be used if approved in advance by the TCO as in the following examples:

(i) If production has not commenced and the accumulated costs represent planning and preproduction or “get ready” expenses.

(ii) If, under the contractor’s accounting system, unit costs for work in process and finished products cannot readily be established.

(iii) If the contract does not specify unit prices.

(iv) If the termination is complete and involves a letter contract.

(2) When the total-cost basis is used under a complete termination, the contractor must itemize costs incurred under the contract up to the effective date of termination. The costs of settlements with subcontractors and applicable settlement expenses must also be added. An allowance for profit (49.202) or adjustment for loss (49.203(c)) must be made. The contract price for all end items delivered or to be delivered and accepted must be deducted. All unliquidated advance and progress payments and disposal and other credits known when the proposal is submitted must also be deducted.

(3) When the total-cost basis is used under a partial termination, the settlement proposal shall not be submitted until completion of the continued portion of the contract. The settlement proposal must be prepared as in paragraph (b)(2) of this section, except that all costs incurred to the date of completion of the continued portion of the contract must be included.

(4) If a construction contract or a lump-sum professional services contract is completely terminated, the contractor shall—

(i) Use the total cost basis of settlement;

(ii) Omit Line 10 “Deduct-Finished Product Invoiced or to be Invoiced” from Section II of SF 1436 Settlement Proposal (Total Cost Basis); and

(iii) Reduce the gross amount of the settlement by the total of all progress and other payments.

(c) *Other basis.* Settlement proposals may not be submitted on any basis other than paragraph (a) or (b) of this section without the prior approval of the chief of the contracting or contract administration office.

49.206-3 Submission of inventory schedules.

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in 49.602-2 and in accordance with 45.606-5.

49.207 Limitation on settlements.

The total amount payable to the contractor for a settlement, before deducting disposal or other credits and exclusive of settlement costs, must not exceed the contract price less payments otherwise made or to be made under the contract.

49.208 Equitable adjustment after partial termination.

Under the termination clause, after partial termination, a contractor may request an equitable adjustment in the price or prices of the continued portion of a fixed-price contract. The TCO shall forward the proposal to the contracting officer except when negotiation authority is delegated to the TCO. The contractor shall submit the proposal in the format of Table 15-2 of 15.408.

(a) When the contracting officer retains responsibility for negotiating the equitable adjustment and executing a supplemental agreement, the contracting officer shall ensure that no portion of an increase in price is included in a termination settlement made or in process.

(b) The TCO shall also ensure that no portion of the costs included in the equitable adjustment are included in the termination settlement.

Subpart 49.3—Additional Principles for Cost-Reimbursement Contracts Terminated for Convenience

49.301 General.

Termination clauses for cost-reimbursement contracts (see 49.503(a)) provide for the settlement of costs and fee, if any. The contract clauses governing costs shall determine what costs are allowable.

49.302 Discontinuance of vouchers.

(a) When the contract has been completely terminated, the contractor shall not use Standard Form 1034 (Public Voucher for Purchases and Services Other than Personal) after the last day of the sixth month following the month in which the termination is effective. The contractor may elect to stop using vouchers at any time during the 6-month period. When the contractor has vouchered out all costs within the 6-month period, a proposal for fee, if any, may be submitted on SF 1437 (see 49.602-1) or by letter appropriately certified. The contractor must submit a substantiated proposal for fee to the TCO within 1 year from the effective date of termination, unless the period is extended by the TCO. When the use of vouchers is discontinued, the contractor shall submit all unvouchered costs and the proposed fee, if any, as specified in 49.303.

(b) When the contract is partially terminated, 49.304 shall apply.

49.303 Procedure after discontinuing vouchers.

49.303-1 Submission of settlement proposal.

The contractor shall submit a final settlement proposal covering unvouchered costs and any proposed fee to within 1 year from the effective date of termination, unless the period is extended by the TCO. The contractor shall use the form prescribed in 49.602-1, unless the TCO authorizes otherwise. The proposal shall not include costs that have been—

(a) Finally disallowed by the contracting officer; or

(b) Previously vouchered and formally questioned by the Government but not yet decided as to allowability.

49.303-2 Submission of inventory schedules.

Subject to the terms of the termination clause and whenever termination inventory is involved, the contractor shall submit complete inventory schedules, to the TCO, reflecting inventory that is allocable to the terminated portion of the contract. The inventory schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on the forms prescribed in 49.602-2 and in accordance with 45.606-5.

49.303-3 Audit of settlement proposal.

The TCO shall submit the settlement proposal to the appropriate audit agency for review (see 49.107). However, if the settlement proposal is limited to an adjustment of fee, no referral to the audit agency is required.

49.303-4 Adjustment of indirect costs.

(a) If the contract contains the clause at 52.216-7, Allowable Cost and Payment, and it appears that adjustment of indirect costs will unduly delay final settlement, the TCO, after obtaining information from the appropriate audit agency, may agree with the contractor to—

(1) Negotiate the amount of indirect costs for the contract period for which final indirect cost rates have not been negotiated, or to use billing rates as final rates for this period if the billing rates appear reasonable; or

(2) Reserve any indirect cost adjustment in the final settlement agreement, pending establishment of negotiated rates under Subpart 42.7.

(b) When an amount of indirect cost is negotiated under paragraph (a)(1) of this section, the contractor shall eliminate the indirect cost and the related direct costs on which it was based from the total pool and base used to compute indirect costs for other contracts performed during the applicable accounting period.

49.303-5 Final settlement.

(a) The TCO shall proceed with the settlement and execution of a settlement agreement upon receipt of the audit report, if applicable, and the contract audit closing statement covering vouchered costs.

(b) The TCO shall adjust the fee as provided in 49.305.

(c) The final settlement agreement may include all demands of the Government and proposals of the contractor under the terminated contract. However, no amount shall be allowed for any item of cost disallowed by the Government, nor for any other item of cost of the same nature.

(d) If an overall settlement of costs is agreed upon, agreement on each element of cost is not necessary. If appropriate, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not include costs that are clearly not allowable under the terms of the contract.

49.304 Procedure for partial termination.

49.304-1 General.

(a) In a partial termination, the TCO shall limit the settlement to an adjustment of the fee, if any, and with the concurrence of the contracting office to a reduction in the estimated cost. The TCO shall adjust the fee as provided in 49.304-2 and 49.305, unless—

(1) The terminated portion is clearly severable from the balance of the contract; or

(2) Performance of the contract is virtually complete, or performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the exceptions in paragraph (a), the procedures in 49.302 and 49.303 apply.

49.304-2 Submission of settlement proposal (fee only).

The contractor shall limit the settlement proposal to a proposed reduction in the amount of fee. The final settlement proposal shall be submitted to the TCO within one year from the effective date of termination, unless the period is extended by the TCO. The proposal may be submitted in the form prescribed in 49.602-1 or by letter appropriately certified. The contractor shall substantiate the amount of fee claimed (see 49.305).

49.304-3 Submission of vouchers.

When a partial termination settlement is limited to adjustment of fee, the contractor shall continue to submit the SF 1034, Public Voucher for Purchases and Services Other than Personal, for costs reimbursable under the contract. The contractor shall not be reimbursed for costs of settlements with subcontractors unless required approvals or ratifications have been obtained (see 49.108).

49.305 Adjustment of fee.

49.305-1 General.

(a) The TCO shall determine the adjusted fee to be paid, if any, in the manner provided by the contract. The determination is generally based on a percentage of completion of the contract or of the terminated portion. When this basis is used, factors such as the extent and difficulty of the work performed by the contractor (*e.g.*, planning, scheduling, technical study, engineering work, production and supervision, placing and supervising subcontracts, and work performed by the contractor in (1) stopping performance, (2) settling terminated sub-

contracts, and (3) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion. The contractor's adjusted fee shall not include an allowance for fee for subcontract effort included in subcontractors' settlement proposals.

(b) The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion is only one factor in computing the percentage of completion. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the TCO of other pertinent factors.

49.305-2 Construction contracts.

(a) The percentage of completion basis refers to the contractor's total effort and not solely to the actual construction work. Generally, the effort of a contractor under a cost-reimbursement construction or professional services contract can be segregated into factors such as—

- (1) Mobilization including organization,
- (2) Use of finances,
- (3) Contracting for and receipt of materials,
- (4) Placement of subcontracts,
- (5) Preparation of shop drawings,
- (6) Work in place performed by own forces,
- (7) Supervision of subcontractors' work,
- (8) Job administration, and
- (9) Demobilization.

(b) Each of the applicable factors in paragraph (a) of this section shall be assigned a weighted value depending on its importance and difficulty. The total weight value of all factors should be easily divisible (*e.g.*, by 100) to determine percentages. The percentage of completion of each factor must be established based upon the specific facts of each contract. When totaled, the percentage of completion of each factor applied to the weighted value of each factor results in the overall percentage of contract completion. The percentage of completion is then applied to the total contract fee or to the fee applicable to the terminated portion of the contract to arrive at an equitable adjustment.

Subpart 49.4—Termination for Default

49.401 General.

(a) Termination for default is generally the exercise of the Government's contractual right to completely or partially terminate a contract because of the contractor's actual or anticipated failure to perform its contractual obligations.

(b) If the contractor can establish, or it is otherwise determined that the contractor was not in default or that the failure to perform is excusable; *i.e.*, arose out of causes beyond the control and without the fault or negligence of the contractor, the default clauses prescribed in 49.503 and located at 52.249 provide that a termination for default will be considered to have been a termination for the convenience of the Government, and the rights and obligations of the parties governed accordingly.

(c) The Government may, in appropriate cases, exercise termination or cancellation rights in addition to those in the contract clauses (see for example, paragraph (h) of the Default clause at 52.249-8).

(d) For default terminations of orders under Federal Supply Schedule contracts, see Subpart 8.4.

(e) Notwithstanding the provisions of this 49.401, the contracting officer may, with the written consent of the contractor, reinstate the terminated contract by amending the notice of termination, after a written determination is made that the supplies or services are still required and reinstatement is advantageous to the Government.

49.402 Termination of fixed-price contracts for default.

49.402-1 The Government's right.

Under contracts containing the Default clause at 52.249-8, the Government has the right, subject to the notice requirements of the clause, to terminate the contract completely or partially for default if the contractor fails to—

- (a) Make delivery of the supplies or perform the services within the time specified in the contract,
- (b) Perform any other provision of the contract, or
- (c) Make progress and that failure endangers performance of the contract.

49.402-2 Effect of termination for default.

(a) Under a termination for default, the Government is not liable for the contractor's costs on undelivered work and is entitled to the repayment of advance and progress payments, if any, applicable to that work. The Government may elect, under the Default clause, to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, as directed by the contracting officer.

(b) The contracting officer shall not use the Default clause as authority to acquire any completed supplies or manufactur-

ing materials unless it has been ascertained that the Government does not already have title under some other provision of the contract. The contracting officer shall acquire manufacturing materials under the Default clause for furnishing to another contractor only after considering the difficulties the other contractor may have in using the materials.

(c) Subject to paragraph (d) of this section, the Government shall pay the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government under the Default clause.

(d) The Government must be protected from overpayment that might result from failure to provide for the Government's potential liability to laborers and material suppliers for lien rights outstanding against the completed supplies or materials after the Government has paid the contractor for them. To accomplish this, before paying for supplies or materials, the contracting officer shall take one or more of the following measures:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims or whether it is feasible to obtain similar bonds to cover outstanding liens.

(2) Require the contractor to furnish appropriate statements from laborers and material suppliers disclaiming any lien rights they may have to the supplies and materials.

(3) Obtain appropriate agreement by the Government, the contractor, and lienors ensuring release of the Government from any potential liability to the contractor or lienors.

(4) Withhold from the amount due for the supplies or materials any amount the contracting officer determines necessary to protect the Government's interest, but only if the measures in paragraphs (d)(1), (2), and (3) of this section cannot be accomplished or are considered inadequate.

(5) Take other appropriate action considering the circumstances and the degree of the contractor's solvency.

(e) The contractor is liable to the Government for any excess costs incurred in acquiring supplies and services similar to those terminated for default (see 49.402-6), and for any other damages, whether or not repurchase is effected (see 49.402-7).

49.402-3 Procedure for default.

(a) When a default termination is being considered, the Government shall decide which type of termination action to take (*i.e.*, default, convenience, or no-cost cancellation) only after review by contracting and technical personnel, and by counsel, to ensure the propriety of the proposed action.

(b) The administrative contracting officer shall not issue a show cause notice or cure notice without the prior approval of the contracting office, which should be obtained by the most expeditious means.

(c) Subdivision (a)(1)(i) of the Default clause covers situations when the contractor has defaulted by failure to make delivery of the supplies or to perform the services within the specified time. In these situations, no notice of failure or of the possibility of termination for default is required to be sent to the contractor before the actual notice of termination (but see paragraph (e) of this section). However, if the Government has taken any action that might be construed as a waiver of the contract delivery or performance date, the contracting officer shall send a notice to the contractor setting a new date for the contractor to make delivery or complete performance. The notice shall reserve the Government's rights under the Default clause.

(d) Subdivisions (a)(1)(ii) and (a)(1)(iii) of the Default clause cover situations when the contractor fails to perform some of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract. If the termination is predicated upon this type of failure, the contracting officer shall give the contractor written notice specifying the failure and providing a period of 10 days (or longer period as necessary) in which to cure the failure. When appropriate, this notice may be made a part of the notice described in paragraph (e)(1) of this section. Upon expiration of the 10 days (or longer period), the contracting officer may issue a notice of termination for default unless it is determined that the failure to perform has been cured. A format for a cure notice is in 49.607.

(e)(1) If termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of the termination. This notice shall call the contractor's attention to the contractual liabilities if the contract is terminated for default, and request the contractor to show cause why the contract should not be terminated for default. The notice may further state that failure of the contractor to present an explanation may be taken as an admission that no valid explanation exists. When appropriate, the notice may invite the contractor to discuss the matter at a conference. A format for a show cause notice is in 49.607.

(2) When a termination for default appears imminent, the contracting officer shall provide a written notification to the surety. If the contractor is subsequently terminated for default, a copy of the notice of default shall be sent to the surety.

(3) If requested by the surety, and agreed to by the contractor and any assignees, arrangements may be made to have future checks mailed to the contractor in care of the surety. In this case, the contractor must forward a written request to the designated disbursing officer specifically directing a change in address for mailing checks.

(4) If the contractor is a small business firm, the contracting officer shall immediately provide a copy of any cure notice or show cause notice to the contracting officer's small business specialist and the Small Business Administration Regional Office nearest the contractor. The contracting officer should, whenever practicable, consult with the small business specialist before proceeding with a default termination (see also 49.402-4).

(f) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The terms of the contract and applicable laws and regulations.

(2) The specific failure of the contractor and the excuses for the failure.

(3) The availability of the supplies or services from other sources.

(4) The urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor.

(5) The degree of essentiality of the contractor in the Government acquisition program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts.

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments.

(7) Any other pertinent facts and circumstances.

(g) If, after compliance with the procedures in paragraphs (a) through (f) of this 49.402-3, the contracting officer determines that a termination for default is proper, the contracting officer shall issue a notice of termination stating—

(1) The contract number and date;

(2) The acts or omissions constituting the default;

(3) That the contractor's right to proceed further under the contract (or a specified portion of the contract) is terminated;

(4) That the supplies or services terminated may be purchased against the contractor's account, and that the contractor will be held liable for any excess costs;

(5) If the contracting officer has determined that the failure to perform is not excusable, that the notice of termination constitutes such decision, and that the contractor has the right to appeal such decision under the Disputes clause;

(6) That the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(7) That the notice constitutes a decision that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause.

(h) The contracting officer shall make the same distribution of the termination notice as was made of the contract. A

copy shall also be furnished to the contractor's surety, if any, when the notice is furnished to the contractor. The surety should be requested to advise if it desires to arrange for completion of the work. In addition, the contracting officer shall notify the disbursing officer to withhold further payments under the terminated contract, pending further advice, which should be furnished at the earliest practicable time.

(i) In the case of a construction contract, promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant that are on the site will be needed.

(j) If the contracting officer determines before issuing the termination notice that the failure to perform is excusable, the contract shall not be terminated for default. If termination is in the Government's interest, the contracting officer may terminate the contract for the convenience of the Government.

(k) If the contracting officer has not been able to determine, before issuance of the notice of termination whether the contractor's failure to perform is excusable, the contracting officer shall make a written decision on that point as soon as practicable after issuance of the notice of termination. The decision shall be delivered promptly to the contractor with a notification that the contractor has the right to appeal as specified in the Disputes clause.

49.402-4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the contracting officer in lieu of termination for default when in the Government's interest:

(a) Permit the contractor, the surety, or the guarantor, to continue performance of the contract under a revised delivery schedule.

(b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved.

(c) If the requirement for the supplies and services in the contract no longer exists, and the contractor is not liable to the Government for damages as provided in 49.402-7, execute a no-cost termination settlement agreement using the formats in 49.603-6 and 49.603-7 as a guide.

49.402-5 Memorandum by the contracting officer.

When a contract is terminated for default or a procedure authorized by 49.402-4 is followed, the contracting officer shall prepare a memorandum for the contract file explaining the reasons for the action taken.

49.402-6 Repurchase against contractor's account.

(a) When the supplies or services are still required after termination, the contracting officer shall repurchase the same or similar supplies or services against the contractor's account as

soon as practicable. The contracting officer shall repurchase at as reasonable a price as practicable, considering the quality and delivery requirements. The contracting officer may repurchase a quantity in excess of the undelivered quantity terminated for default when the excess quantity is needed, but excess cost may not be charged against the defaulting contractor for more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract). Generally, the contracting officer will make a decision whether or not to repurchase before issuing the termination notice.

(b) If the repurchase is for a quantity not over the undelivered quantity terminated for default, the Default clause authorizes the contracting officer to use any terms and acquisition method deemed appropriate for the repurchase. However, the contracting officer shall obtain competition to the maximum extent practicable for the repurchase. The contracting officer shall cite the Default clause as the authority. If the repurchase is for a quantity over the undelivered quantity terminated for default, the contracting officer shall treat the entire quantity as a new acquisition.

(c) If repurchase is made at a price over the price of the supplies or services terminated, the contracting officer shall, after completion and final payment of the repurchase contract, make written demand on the contractor for the total amount of the excess, giving consideration to any increases or decreases in other costs such as transportation, discounts, etc. If the contractor fails to make payment, the contracting officer shall follow the procedures in Subpart 32.6 for collecting contract debts due the Government.

49.402-7 Other damages.

(a) If the contracting officer terminates a contract for default or follows a course of action instead of termination for default (see 49.402-4), the contracting officer promptly must assess and demand any liquidated damages to which the Government is entitled under the contract. Under the contract clause at 52.211-11, these damages are in addition to any excess repurchase costs.

(b) If the Government has suffered any other ascertainable damages, including administrative costs, as a result of the contractor's default, the contracting officer must, on the basis of legal advice, take appropriate action as prescribed in Subpart 32.6 to assert the Government's demand for the damages.

49.403 Termination of cost-reimbursement contracts for default.

(a) The right to terminate a cost-reimbursement contract for default is provided for in the Termination for Default or for Convenience of the Government clause at 52.249-6. A 10-day notice to the contractor before termination for default is required in every case by the clause.

(b) Settlement of a cost-reimbursement contract terminated for default is subject to the principles in Subparts 49.1 and 49.3 the same as when a contract is terminated for convenience, except that—

(1) The costs of preparing the contractor's settlement proposal are not allowable (see paragraph (h)(3) of the clause); and

(2) The contractor is reimbursed the allowable costs, and an appropriate reduction is made in the total fee, if any, (see paragraph (h)(4) of the clause).

(c) The contracting officer shall use the procedures in 49.402 to the extent appropriate in considering the termination for default of a cost-reimbursement contract. However, a cost-reimbursement contract does not contain any provision for recovery of excess repurchase costs after termination for default (but see paragraph (g) of the clause at 52.246-3 with respect to failure of the contractor to replace or correct defective supplies).

49.404 Surety-takeover agreements.

(a) The procedures in this section apply primarily, but not solely, to fixed-price construction contracts terminated for default.

(b) Since the surety is liable for damages resulting from the contractor's default, the surety has certain rights and interests in the completion of the contract work and application of any undisbursed funds. Therefore, the contracting officer must consider carefully the surety's proposals for completing the contract. The contracting officer must take action on the basis of the Government's interest, including the possible effect upon the Government's rights against the surety.

(c) The contracting officer should permit surety offers to complete the contract, unless the contracting officer believes that the persons or firms proposed by the surety to complete the work are not competent and qualified or the proposal is not in the best interest of the Government.

(d) There may be conflicting demands for the defaulting contractor's assets, including unpaid prior earnings (retained percentages and unpaid progress estimates). Therefore, the surety may include a "takeover" agreement in its proposal, fixing the surety's rights to payment from those funds. The contracting officer may (but not before the effective date of termination) enter into a written agreement with the surety. The contracting officer should consider using a tripartite agreement among the Government, the surety, and the defaulting contractor to resolve the defaulting contractor's residual rights, including assertions to unpaid prior earnings.

(e) Any takeover agreement must require the surety to complete the contract and the Government to pay the surety's costs and expenses up to the balance of the contract price

unpaid at the time of default, subject to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished before termination, must be subject to debts due the Government by the contractor, except to the extent that the unpaid earnings may be used to pay the completing surety its actual costs and expenses incurred in the completion of the work, but not including its payments and obligations under the payment bond given in connection with the contract.

(2) The surety is bound by contract terms governing liquidated damages for delays in completion of the work, unless the delays are excusable under the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety must not be paid from unpaid earnings, unless the assignee provides written consent.

(4) The contracting officer must not pay the surety more than the amount it expended completing the work and discharging its liabilities under the defaulting contractor's payment bond. Payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor must be only on authority of—

(i) Mutual agreement among the Government, the defaulting contractor, and the surety;

(ii) Determination of the Comptroller General as to payee and amount; or

(iii) Order of a court of competent jurisdiction.

49.405 Completion by another contractor.

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

49.406 Liquidation of liability.

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

Subpart 49.5—Contract Termination Clauses

49.501 General.

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

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts of \$100,000 or less (short form)*—(1) *General use.* The contracting officer shall insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be \$100,000 or less, except—

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

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

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

(iv) If one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.

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

(b) *Fixed-price contracts over \$100,000*—(1)(i) *General use.* The contracting officer shall insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over \$100,000, except in contracts for —

(A) Dismantling and demolition,

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

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

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

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

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

(ii) *Dismantling and demolition.* The contracting officer shall insert the clause at 52.249-3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to be over \$100,000. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

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

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

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

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

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

49.503 Termination for convenience of the Government and default.

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

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

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

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

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

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

49.504 Termination of fixed-price contracts for default.

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

contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

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

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

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

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

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

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

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

49.505 Other termination clauses.

(a) *Facilities*. The contracting officer shall insert the clause at 52.249-11, Termination of Work (Consolidated Facilities or Facilities Acquisition), in consolidated facilities contracts and facilities acquisition contracts. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

(b) *Personal service contracts*. The contracting officer shall insert the clause at 52.249-12, Termination (Personal

Services), in solicitations and contracts for personal services (see Part 37).

(c) *Failure to perform.* The contracting officer shall insert the clause at 52.249-13, Failure to Perform, in facilities contracts, except facilities use contracts with nonprofit educational institutions.

(d) *Excusable delays.* The contracting officer shall insert the clause at 52.249-14, Excusable Delays, in solicitations and contracts for supplies, services, construction, and research and development on a fee basis, when a cost-reimbursement contract is contemplated. The contracting officer

shall also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts.

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

Subpart 49.6—Contract Termination Forms and Formats

49.601 Notice of termination for convenience.

(See 49.402-3(g) for notice of termination for default.)

49.601-1 Telegraphic notice.

(a) *Complete termination.* The following telegraphic notice is suggested for use if a supply contract is being completely terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

Date _____

XYZ Corporation
New York, NY 12345

Contract No. _____ is completely terminated under clause _____, effective _____ [insert “immediately” or “on _____, 20____,” or “as soon as you have delivered, including prior deliveries, the following items:” (list)]. Immediately stop all work, terminate subcontracts, and place no further orders except to the extent [insert if applicable “necessary to complete items not terminated or”] that you or a subcontractor wish to retain and continue for your own account any work-in-process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Detailed instructions follow.

(Contracting Officer)

(b) *Partial termination.* The following telegraphic notice is suggested for use if a supply contract is being partially terminated for convenience. If appropriately modified, the notice may be used for other than supply contracts.

Date _____

XYZ Corporation
New York, NY 12345

Contract No. _____ is partially terminated under clause _____, effective _____ [insert “immediately” or “on _____, 20____”]. Reduce items to be delivered as follows: [insert instructions]. Immediately stop all work, terminate subcontracts, and place no further orders except as necessary to perform the portion not terminated or that you or a subcontractor wish to retain and continue for your account any work-in-process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Detailed instructions follow.

(Contracting Officer)

49.601-2 Letter notice.

The following letter notice of termination is suggested for use if a contract for supplies is being terminated for convenience.

With appropriate modifications, it may be used in terminating contracts for other than supplies and in terminating subcontracts. This notice shall be sent by certified mail, return receipt requested. If no prior telegraphic notice was issued, use the alternate notice that follows this notice.

NOTICE OF TERMINATION TO PRIME CONTRACTORS

[At the top of the notice, set out all special details relating to the particular termination; e.g., name and address of company, contract number of terminated contract, items, etc.]

(a) *Effective date of termination.* This confirms the Government’s telegram to you dated _____, 20____, terminating _____ [insert “completely” or “in part”] Contract No. _____ (referred to as “the contract”) for the Government’s convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective on the date and in the manner stated in the telegram.

(b) *Cessation of work and notification to immediate subcontractors.* You shall take the following steps:

(1) Stop all work, make no further shipments, and place no further orders relating to the contract, except for—

(i) The continued portion of the contract, if any;

(ii) Work-in-process or other materials that you may wish to retain for your own account; or

(iii) Work-in-process that the Contracting Officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.)

(2) Keep adequate records of your compliance with paragraph (b)(1) of this section showing the—

(i) Date you received the Notice of Termination;

(ii) Effective date of the termination; and

(iii) Extent of completion of performance on the effective date.

(3) Furnish notice of termination to each immediate subcontractor and supplier that will be affected by this termination. In the notice—

(i) Specify your Government contract number;

(ii) State whether the contract has been terminated completely or partially;

(iii) Provide instructions to stop all work, make no further shipments, place no further orders, and terminate all subcontracts under the contract, subject to the exceptions in paragraph (b)(1) of this section;

(iv) Provide instructions to submit any settlement proposal promptly; and

(v) Request that similar notices and instructions be given to its immediate subcontractors.

(4) Notify the Contracting Officer of all pending legal proceedings that are based on subcontracts or purchase orders under the contract, or in which a lien has been or may be placed against termination inventory to be reported to the Government. Also, promptly notify the Contracting Officer of any such proceedings that are filed after receipt of this Notice.

(5) Take any other action required by the Contracting Officer or under the Termination clause in the contract.

(c) *Termination inventory.* (1) As instructed by the Contracting Officer, transfer title and deliver to the Government all termination inventory of the following types or classes, including subcontractor termination inventory that you have the right to take: [Contracting Officer insert proper identification or "None"].

(2) To settle your proposal, it will be necessary to establish that all prime and subcontractor termination inventory has been properly accounted for. For detailed information, see Part 45.

(d) *Settlements with subcontractors.* You remain liable to your subcontractors and suppliers for proposals arising because of the termination of their subcontracts or orders. You are requested to settle these settlement proposals as promptly as possible. For purposes of reimbursement by the Government, settlements will be governed by the provisions of Part 49.

(e) *Completed end items.* (1) Notify the Contracting Officer of the number of items completed under the contract and still on hand and arrange for their delivery or other disposal (see 49.205).

(2) Invoice acceptable completed end items under the contract in the usual way and do not include them in the settlement proposal.

(f) *Patents.* If required by the contract, promptly forward the following to the Contracting Officer:

(1) Disclosure of all inventions, discoveries, and patent applications made in the performance of the contract.

(2) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the contract.

(g) *Employees affected.* (1) If this termination, together with other outstanding terminations, will necessitate a significant reduction in your work force, you are urged to—

(i) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers and occupations, so that the Service can take timely action in assisting displaced workers;

(ii) Give affected employees maximum practical advance notice of the employment reduction and inform them of the facilities and services available to them through the local State Employment Service offices;

(iii) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;

(iv) Inform officials of local unions having agreements with you of the impending reduction-in-force; and

(v) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.

(2) If practicable, urge subcontractors to take similar actions to those described in paragraph (1) of this section.

(h) *Administrative.* The contract administration office named in the contract will identify the Contracting Officer who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

(i) Please acknowledge receipt of this notice as provided below.

(Contracting Officer)

(Name of Office)

(Address)

ACKNOWLEDGMENT OF NOTICE

The undersigned acknowledges receipt of a signed copy of this notice on _____, 20____. Two signed copies of this notice are returned.

(Name of Contractor)

By _____
(Name)

(Title)
(End of notice)

Alternate notice. If no prior telegraphic notice was issued, substitute the following paragraph (a) for paragraph (a) of the notice above:

(a) *Effective date of termination.* You are notified that Contract No. _____ (referred to as "the contract") is terminated _____ [insert "completely" or "in part"] for the Government's convenience under the clause entitled _____ [insert title of appropriate termination clause]. The termination is effective _____ [insert either "immediately upon receipt of this Notice" or "on _____, 20____," or "as soon as you have delivered, including prior deliveries, the following items:" (list)]. Reduce items to be delivered as follows: [insert instructions].

49.602 Forms for settlement of terminated contracts.

The standard forms listed below shall be used for settling terminated prime contracts. The forms at 49.602-1 and 49.602-2 may also be used for settling terminated subcontracts. Standard forms are illustrated in Subpart 53.3.

49.602-1 Termination settlement proposal forms.

(a) Standard Form 1435, Settlement Proposal (Inventory Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on an inventory basis (see 49.206-2(a)).

(b) Standard Form 1436, Settlement Proposal (Total Cost Basis), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the proposals are computed on a total cost basis (see 49.206-2(b)).

(c) Standard Form 1437, Settlement Proposal for Cost-Reimbursement Type Contracts, shall be used to submit settlement proposals resulting from the termination of cost-reimbursement contracts (see 49.302).

(d) Standard Form 1438, Settlement Proposal (Short Form), shall be used to submit settlement proposals resulting from the termination of fixed-price contracts if the total proposal is less than \$10,000 (see 49.206-1(d)).

49.602-2 Inventory schedule forms.

The following forms shall be used to support settlement proposals submitted on the forms specified in 49.602-1(a), (b), and (c) (see 45.606):

(a) Standard Form 1426, Inventory Schedule A (Metals in Mill Product Form), and Standard Form 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).

(b) Standard Form 1428, Inventory Schedule B, and Standard Form 1429, Inventory Schedule B—Continuation Sheet (used for reporting raw materials, purchased parts, finished components, finished product, plant equipment, and miscellaneous inventory).

(c) Standard Form 1430, Inventory Schedule C—(Work-in-Process), and Standard Form 1431, Inventory Schedule C—Continuation Sheet (Work-in-Process).

(d) Standard Form 1432, Inventory Schedule D (Special Tooling and Special Test Equipment), and Standard Form 1433, Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

(e) Standard Form 1434, Termination Inventory Schedule E (Short Form for use with SF 1438 only).

49.602-3 Schedule of accounting information.

Standard Form 1439, Schedule of Accounting Information, shall be filed in support of a settlement proposal unless the proposal is filed on Standard Form 1438, Settlement Proposal (Short Form) (see 49.206-1(e)).

49.602-4 Partial payments.

Standard Form 1440, Application for Partial Payment, shall be used to apply for partial payments (see 49.112-1).

49.602-5 Settlement agreement.

Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall be used to execute a settlement agreement (see 49.109-1).

49.603 Formats for termination for convenience settlement agreements.

The formats to be used for termination for convenience settlement agreements should be substantially as shown in this section (see 49.109). Termination contracting officers (TCO's) may, however, modify the contents of these agreements to conform with special termination clauses prescribed or authorized by their agencies (e.g., see 49.501 and 49.505(e)).

49.603-1 Fixed price contracts—complete termination.

[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts completely terminated.]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the contractor a certificate stating—

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Con-

tractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received \$_____ for work and services performed, or items delivered, under the completed portion of the contract. The Government confirms the right of the Contractor, subject to paragraph (7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$_____ [*insert net amount of settlement*], arrived at by deducting from the sum of \$_____ [*for proposals on an inventory basis insert gross amount of settlement; for proposals on a total cost basis, insert gross amount of settlement less amount shown in subdivision (6)(i) of this subsection*]

(A) The amount of \$_____ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of \$_____ for all applicable property disposal credits [*insert if appropriate, "and (C) the amount of \$_____ for all other amounts due the Government under this contract, except as provided in paragraph (7) of this section."*]

(iii) The net settlement of \$_____ in subdivision (ii) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) of this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: [*The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.*]

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. [*If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.*]

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-2 Fixed-price contracts—partial termination.

[*Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts partially terminated.*]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The terminated portion of the contract is as follows: [*specify the terminated portion clearly as to—*

(i) *Item numbers,*

(ii) *Descriptions,*

(iii) *Quantity terminated,*

(iv) *Unit price of items,*

(v) *Total price of terminated items, and*

(vi) Any other explanation necessary to avoid uncertainty or misunderstanding].

(2) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(3) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating—

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(4) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(5) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(6) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(7)(i) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$_____ [insert net amount of settlement], arrived at by deducting from \$_____ [insert gross amount of settlement],

(A) the amount of \$_____ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest) applicable to the terminated portion of the contract and

(B) the amount of \$_____ for all applicable property disposal credits.

(ii) The net settlement of \$_____ in subdivision (b)(7)(i) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the terminated portion of the contract, except as provided in paragraph (b)(8) of this section.

(iii) Upon payment of the net settlement of \$_____, all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to take further payments or carry out other undertakings concerning the terminated portion of the contract shall cease; provided, that nothing in this agreement shall impair or affect any covenants, terms, or conditions of the contract relating to the completed or continued portion of this contract.

(8) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: *[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items in the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]*

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]*

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-3 Cost reimbursement contracts—complete termination, if settlement includes cost.

[Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement includes costs.]

(a) This supplemental agreement settles the settlement proposal resulting from the Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor certifies that all contract termination inventory (including scrap) has been retained or acquired by the Contractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits have been used in arriving at this agreement.

(2) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by this agreement, has furnished the Contractor a certificate stating—

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract; and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(3) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or he settlement of any subcontract settlement proposal included in this settlement, (i) are properly allocable to the terminated portion of the contract, (ii) do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and (iii) do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(4) The Contractor transfers, conveys, and assigns to the Government all the right, title and interest, if any, that the Contractor has received, or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(5) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(6)(i) The Contractor has received \$_____ for work and services performed, or articles delivered, under the contract before the effective date of termination. The Government confirms the right of the Contractor, subject to paragraph (b)(7) of this section, to retain this sum and agrees that it constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(ii) Further, the Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, the sum of \$_____ [insert net amount of settlement], arrived at by deducting from the sum of \$_____ [insert gross amount of settlement less amount shown in subdivision (6)(i) a of this section]—

(A) The amount of \$_____ for all unliquidated partial or progress payments previously made to the Contractor or its assignee and all unliquidated advance payments (with any interest),

(B) The amount of \$_____ for all applicable property disposal credits [insert if appropriate, “and (C) the amount of \$_____ for all other amounts due the Government under this contract, except as provided in paragraph (b)(7) of this section.”]

(iii) The net settlement of \$_____ in subdivision (b)(6)(ii) of this section, together with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor for the complete termination of the contract and of all other demands and liabilities of the Contractor and the Government under the contract, except as provided in paragraph (b)(7) in this section.

(7) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: *[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]*

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights of the Government to take the benefit of agreements or judgments affecting royalties paid or payable in connection with the performance of the contract.

(iii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]*

(iv) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent

infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(v) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(vi) All rights and liabilities of the parties under the contract relating to any contract termination inventory stored for the Government.

(vii) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(viii) All rights and liabilities of the parties relating to Government property furnished to the Contractor for the performance of this contract.

(ix) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(x) Unresolved demands or assertions by the Contractor against the Government for costs under General Accounting Office exceptions or other costs of the same nature that are excluded from the settlement without prejudice to the rights of either party, as follows: *[Insert amount and describe charges not waived.]*

(xi) Claims by the Contractor against the Government, when the Contractor's rights of reimbursement are disputed, that are excluded without prejudice to the rights of either party are as follows: *[Insert the amounts and describe the claims on which the Contracting Officer has made findings and has disallowed and on which the Contractor has taken, or intends to take, timely appeal.]*

(xii) Unresolved demands or assertions by the Contractor against the Government that are unknown in amount and involve costs alleged to be reimbursable under the contract are as follows: *[Insert the estimated amounts and describe the charges.]*

(xiii) Unknown amounts alleged by the Contractor against the Government, based upon responsibility of the Contractor to third parties that involve costs reimbursable under the contract.

(xiv) Debts due the Government by the Contractor that are based on refunds, rebates, credits, or other amounts not now known to the Government, with interest, now due or that may become due the Contractor from third parties, if the amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. The Contractor shall pay to the Government, within 30 days after receipt, any of these amounts that become due from any third party or any other source. Interest at the rate established by the Secretary of the Treasury under 50 U.S.C. (App.) 1215(b)(2) shall accrue

and shall be paid to the Government on any amounts that remain unpaid after the 30-day period.

(xv) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-4 Cost-reimbursement contracts—complete termination, with settlement limited to fee.

[Insert the following in Block 14 of SF 30 for settlement of cost-reimbursement contracts that are completely terminated, if settlement is limited to fee.]

(a) This supplemental agreement settles the amount of fee due under the contract, terminated in its entirety by Notice of Termination dated _____.

(b) The parties agree to the following:

(1) The Contractor has received \$_____ on account of its fee under the contract before the effective date of termination.

(2) The Government agrees to pay to the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$_____ *[insert net amount to be paid on account of fee]*. This sum, with sums previously paid, constitutes payment in full and complete settlement of the amount due the Contractor on account of its fee under the contract.

(3) The Contractor's allowable costs under the contract will be paid under the terms and conditions of the contract and Parts 31 and 49 of the Federal Acquisition Regulation. *[Insert paragraph (a)(3) of this subsection only if there are costs to be vouchered out (see 49.302) or if there are costs to be covered later by a separate settlement agreement.]*

(4) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: *[The following list of reserved or excepted rights and liabilities is intended to cover those that should most frequently be reserved and that should be scrutinized at the time a settlement agreement is negotiated (see 49.109-2). The suggested language of the excepted items on the list may be varied at the discretion of the contracting officer. If accuracy or completeness can be achieved by referencing the number of a contract clause or provision covering the matter in question, then follow that method of enumerating reserved rights and liabilities. Omit any of the following that are not applicable and add any additional exceptions or reservations required.]*

(i) All rights and liabilities, if any, of the parties, as to matters covered by any renegotiation authority.

(ii) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of Acts of Congress and Executive orders, including, without limitation, any applicable clauses relating to: labor law, contingent fees, domestic articles, and employment of aliens. *[If the contract contains clauses of this character inserted for reasons other than requirements of Acts of Congress or Executive orders, the suggested language should be appropriately modified.]*

(iii) All rights and liabilities of the parties arising under the contract and relating to reproduction rights, patent infringements, inventions, or applications for patents, including rights to assignments, invention reports, licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under the bonds.

(iv) All rights and liabilities of the parties, arising under the contract or otherwise, and concerning defects, guarantees, or warranties relating to any articles or component parts furnished to the Government by the Contractor under the contract or this agreement.

(v) All rights and liabilities of the parties under agreements relating to the future care and disposition by the Contractor of Government-owned property remaining in the Contractor's custody.

(vi) All rights and liabilities of the parties relating to Government property furnished to, or acquired by, the Contractor for the performance of the contract.

(vii) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(viii) All rights and liabilities, if any, of the parties under those clauses of the contract relating to price reductions for defective cost or pricing data.

(End of agreement)

49.603-5 Cost-reimbursement contracts—partial termination.

[Insert the following in Block 14 of SF 30, Amendment of Solicitation/Modification of Contract, for settlement agreements for cost-reimbursement contracts as a result of partial termination.]

(a) This supplemental agreement settles the termination settlement proposal resulting from the Notice of Termination dated _____.

(b) The parties agree as follows:

(1) The contract is amended by deleting the terminated portion as follows: *[specify the terminated portion clearly as to—*

(i) Item numbers,

(ii) Descriptions,

(iii) Quantity terminated,

(iv) Unit and total price of terminated items, and

(v) Any other explanation necessary to avoid uncertainty or misunderstanding].

(2) The fee stated in the contract is decreased by \$____, from \$____ to \$____ *[Insert, if appropriate, “(3) The estimated cost of the contract is decreased by \$____, from \$____ to \$____”].*

(c) The Contractor's allowable costs and earned fee, if any, for the terminated portion of the contract will continue to be reimbursed on SF 1034, Public Voucher for Purchase and Services Other Than Personal, under the applicable provisions

of the contract and Part 31 of the Federal Acquisition Regulation.

(End of agreement)

49.603-6 No-cost settlement agreement—complete termination.

[Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under a complete termination, is to be executed.]

(a) This supplemental agreement *[insert “modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated _____” or, if not previously terminated, “terminates the contract in its entirety”].*

(b) The parties agree as follows:

The Contractor unconditionally waives any charges against the Government because of the termination of the contract and, except as set forth below, releases it from all obligations under the contract or due to its termination. The Government agrees that all obligations under the contract are concluded, except as follows: *[List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).]*

(End of agreement)

49.603-7 No-cost settlement agreement—partial termination.

[Insert the following in Block 14 of SF 30 if a no-cost settlement agreement, under partial termination, is to be executed.]

(a) This supplemental agreement modifies the contract to reflect a no-cost settlement agreement with respect to the Notice of Termination dated _____.

(b) The parties agree as follows:

(1) The terminated portion of the contract is as follows: *[Specify—*

(i) item numbers,

(ii) descriptions,

(iii) quantity terminated,

(iv) unit and total price of terminated items, and

(v) any other explanation necessary to avoid uncertainty or misunderstanding.]

(2) The Contractor unconditionally waives any charges against the Government arising under the terminated portion of the contract or by reason of its termination, including, without limitation, all obligations of the Government to make further payments or to carry out any further undertakings under the terminated portion of the contract. The Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries under the terminated portion of the contract. Nothing in this paragraph affects any other covenants, terms, or conditions of the contract. Under the terminated portion of the contract, the following rights and liabilities of the parties are reserved: *[List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).]*

(End of agreement)

49.603-8 Fixed-price contracts—settlements with subcontractors only.

[Insert the following in Block 14 of SF 30 for settlements of fixed-price contracts covering only settlements with subcontractors.]

(a) This agreement settles that portion of the settlement proposal of the contractor that is based upon termination of the following subcontracts entered into in performing this contract: *[Insert a list of the terminated subcontracts included in this settlement.]*

(b) The parties agree to the following:

(1) The Contractor certifies that each immediate subcontractor, whose settlement proposal is included in the proposal settled by the agreement, has furnished the Contractor a certificate stating—

(i) That all subcontract termination inventory (including scrap) has been retained or acquired by the subcontractor, sold to third parties, returned to suppliers, delivered to or stored for the Government, or otherwise properly accounted for, and that all proceeds and retention credits were used in arriving at the settlement of the subcontract, and

(ii) That the subcontractor has received a similar certificate from each immediate subcontractor whose proposal was included in its proposal.

(2) The Contractor certifies that all items of termination inventory, the costs of which were used in arriving at the amount of this settlement or the settlement of any subcontract settlement proposal included in this settlement,—

(i) Are properly allocable to the terminated portion of the contract,

(ii) Do not exceed the reasonable quantitative requirements of the terminated portion of the contract, and

(iii) Do not include any items reasonably usable without loss to the Contractor on its other work. The Contractor further certifies that the Contracting Officer has been informed of any substantial change in the status of the items between the dates of the termination inventory schedules and the date of this agreement.

(3) The Contractor transfers, conveys, and assigns to the Government all the right, title, and interest, if any, that the Contractor has received or is entitled to receive, in and to subcontract termination inventory not otherwise properly accounted for.

(4) The Contractor shall, within 10 days after receipt of the payment specified in this agreement, pay to each of its immediate subcontractors (or their respective assignees) the amounts to which they are entitled, after deducting any prior payments and, if the Contractor so elects, any amounts due and payable to the Contractor by those subcontractors.

(5) The Government agrees to pay the Contractor or its assignee, upon presentation of a proper invoice or voucher, \$____ *[insert net amount of settlement]*, which, together with the amount of \$____ previously paid the Contractor as partial, progress, or advance payments, constitutes payment in full and complete settlement, except as provided in paragraph (b)(6) of

this section, of the amount due the Contractor for that portion of its settlement proposal that is based upon termination of the subcontracts listed above.

(6) Regardless of any other provision of this agreement, the following rights and liabilities of the parties under the contract are reserved: *[List reserved or excepted rights and liabilities. See 49.109-2 and 49.603-1(b)(7).]*

(End of agreement)

49.603-9 Settlement of reservations.

[Insert the following in Block 14 of SF 30 for settlement of reservations.]

(a) Supplemental Agreement No. _____, dated _____, was executed to reflect the settlement of the termination of this contract. The supplemental agreement excepted from the settlement certain items described in the agreement including the items described in paragraph (b) of this section. This supplemental agreement settles those items listed in paragraph (b) of this section.

(b) The parties agree to the following:

(1) The Government agrees to pay the contractor \$_____ for the following reserved or excepted items:* *[List items.]*

(2) The Contractor releases and forever discharges the Government from all liability and from all existing and future claims and demands that it may have under this contract, insofar as it pertains to the contract, for the items described in paragraph (1) of this section.*

*When payment is due the Government, reverse the words “Government” and “contractor” in paragraphs (b)(1) and (b)(2).

(End of agreement)

49.604 Release of excess funds under terminated contracts.

The following format shall be used to recommend the release of excess funds under terminated contracts, except if the contracting office retains responsibility for settlement of the termination:

FROM: Termination Contracting Officer _____
[address]

To: Contracting office _____ [address]

SUBJ: Terminated Contract No _____ with _____
[Contractor]

Refs:

(a) *[Cite termination notice and effective date.]*

(b) *[Cite prior letters releasing excess funds, if any.]*

(1) Referenced termination notice, _____ *[insert “completely” or “partially”]* terminated contract _____.

(2) Based on the best information available, it is estimated that the gross settlement cost will be \$____. The amount available for release as excess to the contract is \$____. Any payments previously made to the Contractor for terminated items have been considered in arriving at the above amounts.

[If prior letters recommending release of excess funds are cited, use the following as paragraph 2:]

The estimated settlement costs previously reported by reference (b) in the amount of \$____ are revised. On the best evidence now available, it is estimated that the settlement costs will be \$____. The additional amount available for release is \$____.]

(3) The related appropriations and amounts involved are:

Appropriations	Allocated Amounts
_____	_____
_____	_____

Copies to:

Paying Office

Accounting and Finance Office

Other

49.605 Request to settle subcontractor settlement proposals.

Contractors requesting authority to settle subcontractor settlement proposals shall furnish applicable information from the list below and any additional information required by the contracting officer:

- (a) Name of contractor and address of principal office.
- (b) Name and location of divisions of the applicant's plant for which authorization is requested.
- (c) An explanation of the necessity and justification for the authorization requested.
- (d) A full description of the applicant's organization for handling terminations, including the names of the officials in charge of processing and settling proposals.
- (e) The number and dollar amount (estimated if necessary) of uncompleted contracts with Government agencies and the percentage applicable to each agency.
- (f) The number and dollar amount (estimated if necessary) of uncompleted subcontracts under Government contracts and the percentage applicable to each agency.
- (g) The extent of the applicant's experience in termination matters, including the handling of proposals of subcontractors.
- (h) The approximate amount and general nature of terminations of the applicant currently in process.
- (i) A statement that no other application has been made for any division of the applicant's plant covered by the application or, if one has been made, a full statement of the facts.
- (j) The limit of authorization requested.

49.606 Granting subcontract settlement authorization.

Contracting officers shall use the following format when granting subcontract settlement authorization:

LETTER OF AUTHORIZATION

(a) Your request of ____ (date) is approved, and you are authorized, subject to the limitations of subsection 49.108-4 and those stated below, to settle, without further approval of the Government, all subcontracts and purchase orders terminated by you as a result of a Government contract being terminated or modified—

- (1) For the convenience of the Government or
- (2) Under any other circumstances that may require the Government to bear the cost of their settlement.

(b) This authorization does not extend to the disposition of Government-furnished material or articles completed but undelivered under the subcontract or purchase order, as these require screening and approval of disposal actions by the Government, except that allocable completed articles may be disposed of without Government approval or screening if the total amount (at subcontract price) when added to the amount of settlement (as computed below) does not exceed \$____ *[insert limit of authorization being granted]*.

(c) This authorization is subject to the following conditions and requirements:

(1) The amount of the subcontract termination settlement does not exceed \$____ *[insert limit of authorization being granted]*, computed as follows:

(i) Do not deduct advance or partial payments or credits for retention or other disposal of termination inventory allocated to the settlement proposal.

(ii) Deduct amounts payable for completed articles or work at the contract price or for the settlement of termination proposals of subcontractors (except those settlements that have not been approved by the Government).

(2) Any termination inventory involved has been disposed of under subsection 49.108-4, except that screening and Government approval of scrap and salvage determinations are not required.

(3) The Contracting Officer may incorporate into each Notice of Termination specific instructions about the disposition of specific items of termination inventory, or the Contracting Officer may, at any time before final settlement, issue specific instructions. These instructions will not affect any disposal action taken by you or your subcontractors before their receipt.

(4) The settlements made by you with your subcontractors and suppliers under this authorization, including sales, retention, or other dispositions of property involved in making these settlements, are reimbursable under Part 49 and the Termination clause of the contract, and do not require approval of the Contracting Officer.

(5) Any number of separate settlements of \$____ *[insert limit of authorization granted]* or less may be made with a single subcontractor. Settlement proposals that would normally be included in a single proposal; *e.g.*, those based on a

series of separate orders for the same item under one contract, should be consolidated whenever possible and shall not be divided to bring them within the authorization.

(6) This authorization does not apply if a subcontractor or supplier is affiliated with you. For this purpose, you should consider a contractor to be affiliated with you if you are under common control or if there is any common interest between you by reason of stock ownership, or otherwise, that is sufficient to create a reasonable doubt that the bargaining between you is completely at arm’s length.

(7) A representative of this office will, from time to time, review the methods used in negotiating settlements with your subcontractors and will make a selective examination of the settlements made by you. If the review indicates that you are not adequately protecting the Government’s interest, this delegation will be revoked.

(End of letter)

49.607 Delinquency notices.

The formats of the delinquency notices in this section may be used to satisfy the requirements of 49.402-3. All notices will be sent with proof of delivery requested. (See Subpart 42.13 for stop-work orders.)

(a) *Cure notice.* If a contract is to be terminated for default before the delivery date, a “Cure Notice” is required by the Default clause. Before using this notice, it must be ascertained that an amount of time equal to or greater than the period of “cure” remains in the contract delivery schedule or any extension to it. If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the “Cure Notice” should not be issued. The “Cure Notice” may be in the following format:

CURE NOTICE

You are notified that the Government considers your ____ [*specify the contractor’s failure or failures*] a condition that is endangering performance of the contract. Therefore, unless

this condition is cured within 10 days after receipt of this notice [*or insert any longer time that the Contracting Officer may consider reasonably necessary*], the Government may terminate for default under the terms and conditions of the ____ [*insert clause title*] clause of this contract.

(End of notice)

(b) *Show cause notice.* If the time remaining in the contract delivery schedule is not sufficient to permit a realistic “cure” period of 10 days or more, the following “Show Cause Notice” may be used. It should be sent immediately upon expiration of the delivery period.

SHOW CAUSE NOTICE

Since you have failed to ____ [*insert “perform Contract No. ____ within the time required by its terms”, or “cure the conditions endangering performance under Contract No ____ as described to you in the Government’s letter of ____ (date)”*], the Government is considering terminating the contract under the provisions for default of this contract. Pending a final decision in this matter, it will be necessary to determine whether your failure to perform arose from causes beyond your control and without fault or negligence on your part. Accordingly, you are given the opportunity to present, in writing, any facts bearing on the question to ____ [*insert the name and complete address of the contracting officer*], within 10 days after receipt of this notice. Your failure to present any excuses within this time may be considered as an admission that none exist. Your attention is invited to the respective rights of the Contractor and the Government and the liabilities that may be invoked if a decision is made to terminate for default.

Any assistance given to you on this contract or any acceptance by the Government of delinquent goods or services will be solely for the purpose of mitigating damages, and it is not the intention of the Government to condone any delinquency or to waive any rights the Government has under the contract.

(End of notice)

* * * * *

PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS

Sec.

50.000 Scope of part.
50.001 Definitions.

Subpart 50.1—General

50.101 Authority.
50.102 Policy.
50.103 [Reserved]
50.104 [Reserved]
50.105 Records.

Subpart 50.2—Delegation of and Limitations on Exercise of Authority

50.201 Delegation of authority.
50.202 Contract adjustment boards.
50.203 Limitations on exercise of authority.

Subpart 50.3—Contract Adjustments

50.300 Scope of subpart.
50.301 General.
50.302 Types of contract adjustment.
50.302-1 Amendments without consideration.

50.302-2 Correcting mistakes.
50.302-3 Formalizing informal commitments.
50.303 Contract adjustment.
50.303-1 Contractor requests.
50.303-2 Contractor certification.
50.304 Facts and evidence.
50.305 Processing cases.
50.306 Disposition.
50.307 Contract requirements.

Subpart 50.4—Residual Powers

50.400 Scope of subpart.
50.401 Standards for use.
50.402 General.
50.403 Special procedures for unusually hazardous or nuclear risks.
50.403-1 Indemnification requests.
50.403-2 Action on indemnification requests.
50.403-3 Contract clause.

This page intentionally left blank.

50.000 Scope of part.

This part prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 (50 U.S.C. 1431–1434), referred to in this part as “the Act,” and Executive Order 10789, dated November 14, 1958, referred to in this part as “the Executive order.” It does not cover advance payments (see Subpart 32.4).

50.001 Definitions.

As used in this part—

“Approving authority” means an agency official or contract adjustment board authorized to approve actions under the Act and Executive order.

“Secretarial level” means a level at or above the level of a deputy assistant agency head, or a contract adjustment board.

Subpart 50.1—General**50.101 Authority.**

(a) The Act empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense.

(b) The Executive order authorizes the heads of the following agencies to exercise the authority conferred by the Act and to delegate it to other officials within the agency: the Government Printing Office; the Federal Emergency Management Agency; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the General Services Administration; the Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, and Transportation Departments; the Department of Energy for functions trans-

ferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

50.102 Policy.

(a) The authority conferred by the Act may not—

(1) Be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort or

(2) Be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under the Act shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under the Act; *e.g.*, rescission or reformation for mutual mistake, are now available under the authority of the Contract Disputes Act of 1978. In accordance with paragraph (a)(2) of this section, Part 33 must be followed in preference to Part 50 for such relief. In case of doubt as to whether Part 33 applies, the contracting officer should seek legal advice.

50.103 [Reserved]**50.104 [Reserved]****50.105 Records.**

Agencies shall maintain complete records of all actions taken under this Part 50. For each request for relief processed, these records shall include, as a minimum—

(a) The contractor’s request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see 50.306 and 50.402); and

(d) A copy of the contractual document implementing an approved request.

Subpart 50.2—Delegation of and Limitations on Exercise of Authority

50.201 Delegation of authority.

The Public Printer may delegate in writing authority under the Act and Executive order, subject to the following limitations:

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of \$50,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see 50.403).

50.202 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this Part 50 and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

50.203 Limitations on exercise of authority.

(a) The Act is not authority for—

(1) Using a cost-plus-a-percentage-of-cost system of contracting;

(2) Making any contract that violates existing law limiting profit or fees;

(3) Providing for other than full and open competition for award of contracts for supplies or services; or

(4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.

(b) No contract, amendment, or modification shall be made under the Act's authority—

(1) Unless the approving authority finds that the action will facilitate the national defense;

(2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head (50.403) are not limited to amounts appropriated or to contract authorization); and

(4) That will obligate the Government for any amount over \$25 million, unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under 50.403.

(c) No contract shall be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under 10 U.S.C. 2304(a)(15) or 41 U.S.C. 252(c)(14), or MMAR 14.404-1(f).

(d) No informal commitment shall be formalized unless—

(1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

(i) Release a contractor from performance of an obligation over \$50,000;

(ii) Result in an increase in cost to the Government over \$50,000;

(iii) Deal with, or directly affect, any matter that has been submitted to the General Accounting Office; or

(iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over \$1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

Subpart 50.3—Contract Adjustments

50.300 Scope of subpart.

This subpart prescribes standards and procedures for processing contractors' requests for contract adjustment under the Act and Executive order.

50.301 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by the Act. Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the types of cases in which action may be appropriate, examples are included in 50.302. Even if all of the factors in any of the examples are present, other considerations may warrant denying a contractor's request for contract adjustment. The examples are not intended to exclude other cases in which the approving authority determines that the circumstances warrant action.

50.302 Types of contract adjustment.

50.302-1 Amendments without consideration.

(a) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

50.302-2 Correcting mistakes.

(a) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

(1) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.

(2) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.

(3) A mutual mistake as to a material fact.

(b) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly.

50.302-3 Formalizing informal commitments.

Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them, has furnished or arranged to furnish supplies or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

50.303 Contract adjustment.

50.303-1 Contractor requests.

A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

(a) The precise adjustment requested;

(b) The essential facts, summarized chronologically in narrative form;

(c) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in 50.301 and 50.302, when the contractor considers itself entitled to the adjustment; and

(d) Whether or not—

(1) All obligations under the contracts involved have been discharged;

(2) Final payment under the contracts involved has been made;

(3) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(4) The contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

50.303-2 Contractor certification.

A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that—

(a) The request is made in good faith and

(b) The supporting data are accurate and complete to the best of that person's knowledge and belief.

50.304 Facts and evidence.

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under 50.303-1 with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and information as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration—essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor (50.302-1(a)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to paragraph (b)(3) of this section.

(5) An estimate of the contractor's total profit or loss under the contracts if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss.

(6) An estimate of the contractor's total profit or loss from other Government business and all other sources, from the date of the first contract involved to the estimated completion date of the last contract involved.

(7) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved.

(8) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion.

(9) A statement of the minimum amount the contractor needs as an amendment without consideration to enable contract completion, and the detailed basis for that amount.

(10) An estimate of the time required to complete each contract if the request is granted.

(11) A statement of the factors causing the loss under the contracts involved.

(12) A statement of the course of events anticipated if the request is denied.

(13) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and broken down by affiliates. They should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner.

(14) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration—essentiality not a factor.* When a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor (50.302-1(b)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A clear statement of the precise Government action that the contractor considers to have caused a loss under the contract, with evidence to support each essential fact.

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(3) The estimated total loss under the contract, with detailed supporting analysis.

(4) The estimated loss resulting specifically from the Government action, with detailed supporting analysis.

(d) *Correcting mistakes.* When a request involves possible correction of a mistake (50.302-2), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment (50.302-3), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this section, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved, and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

50.305 Processing cases.

(a) In response to a contractor request made in accordance with 50.303-1, the contracting officer or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

(b) When a case involves matters of interest to more than one Government agency, the interested agencies should maintain liaison with each other to determine whether joint action should be taken.

(c) When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(d) When essentiality to the national defense is an issue (50.302-1(a)), agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

50.306 Disposition.

When approving or denying a contractor's request made in accordance with 50.303-1, the approving authority shall sign and date a Memorandum of Decision containing—

(a) The contractor's name and address, the contract identification, and the nature of the request;

(b) A concise description of the supplies or services involved;

(c) The decision reached and the actual cost or estimated potential cost involved, if any;

(d) A statement of the circumstances justifying the decision;

(e) Identification of any of the foregoing information classified “Confidential” or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(f) If some adjustment is approved, a statement in substantially the following form: “I find that the action authorized herein will facilitate the national defense.” The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating from the recommendation.

50.307 Contract requirements.

(a) The Act and Executive order require that every contract entered into, amended, or modified under this Part 50 shall contain—

(1) A citation of the Act and Executive order;

(2) A brief statement of the circumstances justifying the action; and

(3) A recital of the finding that the action will facilitate the national defense.

(b) The authority in 50.101(a) shall not be used to omit from contracts, when otherwise required, the clauses at 52.203-5, Covenant Against Contingent Fees; 52.215-2, Audit and Records—Negotiation; 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation; 52.222-6, Davis-Bacon Act; 52.222-10, Compliance With Copeland Act Requirements; 52.222-20, Walsh-Healey Public Contracts Act; 52.222-26, Equal Opportunity; and 52.232-23, Assignment of Claims.

Subpart 50.4—Residual Powers

50.400 Scope of subpart.

This subpart prescribes standards and procedures for exercising residual powers under the Act. The term “residual powers” includes all authority under the Act except—

- (a) That covered by Subpart 50.3 and
- (b) The authority to make advance payments (see Subpart 32.4).

50.401 Standards for use.

Subject to the limitations in 50.203, residual powers may be used in accordance with the policies in 50.102 when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at 52.250-1, Indemnification Under Public Law 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers' compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

50.402 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by 50.306.

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of 50.307.

50.403 Special procedures for unusually hazardous or nuclear risks.

50.403-1 Indemnification requests.

(a) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks should be submitted to the contracting officer and shall include the following information:

- (1) Identification of the contract for which the indemnification clause is requested.
- (2) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(3) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including—

- (i) Names of insurance companies, policy numbers, and expiration dates;
- (ii) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;
- (iii) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;
- (iv) Deductibles, if any, applicable to losses under the policies;
- (v) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and
- (vi) Applicable workers' compensation insurance coverage.

(4) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(5) Whether the contractor's insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(6) If the contractor is a division or subsidiary of a parent corporation,—

- (i) A statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification and
- (ii) A description of the precise legal relationship between parent and subsidiary or division.

(b) If the dollar value of the contractor's insurance coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a) of this section, or if other significant changes in insurance coverage occur after submission and before approval, the contractor shall immediately submit to the contracting officer a brief description of the changes.

50.403-2 Action on indemnification requests.

(a) The contracting officer, with assistance from legal counsel and cognizant program office personnel, shall review the indemnification request and ascertain whether it contains all required information. If the contracting officer, after considering the facts and evidence, denies the request, the contracting officer shall notify the contractor promptly of the denial and of the reasons for it. If recommending approval, the

contracting officer shall forward the request (as modified, if necessary, by negotiation) through channels to the appropriate official specified in 50.201(d). The contracting officer's submission shall include all information submitted by the contractor and—

(1) All pertinent information regarding the proposed contract or program, including the period of performance, locations, and facilities involved;

(2) A definition of the unusually hazardous or nuclear risks involved in the proposed contract or program, with a statement that the parties have agreed to it;

(3) A statement by responsible authority that the indemnification action would facilitate the national defense;

(4) A statement that the contract will involve unusually hazardous or nuclear risks that could impose liability upon the contractor in excess of financial protection reasonably available;

(5) A statement that the contractor is complying with applicable Government safety requirements;

(6) A statement of whether the indemnification should be extended to subcontractors; and

(7) A description of any significant changes in the contractor's insurance coverage (see 50.403-1(b)) occurring since submission of the indemnification request.

(b) Approval of a request to include the indemnification clause in a contract shall be by a Memorandum of Decision executed by the appropriate official specified in 50.201(d).

(c) When use of the indemnification clause is approved under paragraph (b) of this section, the definition of unusually hazardous or nuclear risks (see paragraph (a)(2) of this section) shall be incorporated into the contract, along with the clause.

(d) When approval is—

(1) Authorized in the Memorandum of Decision and

(2) Justified by the circumstances, the contracting officer may approve the contractor's written request to provide for indemnification of subcontractors, using the same procedures as those required for contractors.

50.403-3 Contract clause.

The contracting officer shall insert the clause at 52.250-1, Indemnification Under Public Law 85-804, in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)). In cost-reimbursement contracts, the contracting officer shall use the clause with its Alternate I.

* * * * *

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

Sec.

51.000 Scope of part.

Subpart 51.1—Contractor Use of Government Supply Sources

51.100 Scope of subpart.

51.101 Policy.

51.102 Authorization to use Government supply sources.

51.103 Ordering from Government supply sources.

51.104 Furnishing assistance to contractors.

51.105 Payment for shipments.

51.106 Title.

51.107 Contract clause.

Subpart 51.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

51.200 Scope of subpart.

51.201 Policy.

51.202 Authorization.

51.203 Means of obtaining service.

51.204 Use of interagency fleet management system
(IFMS) vehicles and related services.

51.205 Contract clause.

This page intentionally left blank.

51.000 Scope of part.

This part prescribes policies and procedures for the use by contractors of Government supply sources and interagency fleet management system (IFMS) vehicles and related services.

Subpart 51.1—Contractor Use of Government Supply Sources

51.100 Scope of subpart.

This subpart prescribes policies and procedures for the use of Government supply sources (see 51.102(c)) by contractors. In this subpart, the terms “contractors” and “contracts” include “subcontractors” and “subcontracts.”

51.101 Policy.

(a) If it is in the Government’s interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—

- (1) Government cost-reimbursement contracts;
- (2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor’s contracts are of a Government cost-reimbursement nature; or
- (3) A contract under the Javits-Wagner-O’Day Act (41 U.S.C. 46, *et seq.*) if:
 - (i) The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government, and
 - (ii) The supplies or services received are directly used in making or providing a commodity or service, approved by the Committee for Purchase From People Who Are Blind or Severely Disabled, to the Federal Government (see Subpart 8.7).

(b) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources (see 41 CFR 101-26.507).

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see Subpart 8.7) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see 52.208-9(c)).

51.102 Authorization to use Government supply sources.

(a) Before issuing an authorization to a contractor to use Government supply sources in accordance with 51.101(a) or

(b), the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. A written finding is not required when authorizing use of Government supply sources in accordance with 51.101(c). Except for findings under 51.101(a)(3), the determination shall be based on, but not limited to, considerations of the following factors:

- (1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.
- (2) The lower cost of items available through Government supply sources.
- (3) Suitability of items available through Government supply sources.
- (4) Delivery factors such as cost and time.
- (5) Recommendations of the contractor.

(b) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(c) Upon deciding to authorize a contractor to use Government supply sources, the contracting officer shall request, in writing, as applicable—

(1) A FEDSTRIP activity address code, through the agency’s central contact point for matters involving activity address codes, from the:

General Services Administration
FCSI
Washington DC 20406

(2) A MILSTRIP activity address code from the appropriate Department of Defense (DOD) service point listed in Section 1 of the Introduction to the DOD Activity Address Directory;

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the:

Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90)
Office of Acquisition and Materiel Management
Department of Veterans Affairs
810 Vermont Avenue NW
Washington DC 20420

(4) Approval for the contractor to acquire helium from the:

Department of the Interior
Bureau of Land Management
Helium Field Operations
801 S. Fillmore Street
Amarillo TX 79101-3545

or

(5) Approval from the appropriate agency for the contractor to use a Government supply source other than those identified in paragraphs (c)(1) through (c)(4) of this section.

(d) Each request made under paragraph (c) of this section shall contain—

- (1) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed;
- (2) A copy of the contracting officer's letter of authorization to the contractor;
- (3) The prime contract number(s); and
- (4) The effective date and duration of each contract.

(e) In each authorization to the contractor, the contracting officer—

- (1) Shall cite the contract number(s) involved;
- (2) Shall, when practicable, limit the period of the authorization;
- (3) Shall specify, as appropriate, that—

(i) When requisitioning from GSA or DOD, the contractor shall use FEDSTRIP or MILSTRIP, as appropriate, and include the activity address code assigned by GSA or DOD;

(ii) When requisitioning from the VA, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, Optional Form 347, Order for Supplies or Services (see 53.302-347), or an agency-approved form; and

(iii) When placing orders for helium with the Bureau of Land Management, the contractor shall reference the Federal contract number on the purchase order;

(4) May include any other limitations or conditions deemed necessary. For example, the contracting officer may—

- (i) Authorize purchases from Government supply sources of any overhead supplies, but no production supplies;
- (ii) Limit any authorization requirement to use Government sources to a specific dollar amount, thereby leaving the contractor free to make smaller purchases from other sources if so desired;
- (iii) Restrict the authorization to certain facilities or to specific contracts; or
- (iv) Provide specifically if vesting of title is to differ from other property acquired or otherwise furnished by the contractor for use under the contract; and

(5) Shall instruct the contractor to comply with the applicable policies and procedures prescribed in this subpart.

(f) After issuing the authorization, the authorizing agency shall be responsible for—

- (1) Ensuring that contractors comply with the terms of their authorizations and that supplies and services obtained from Government supply sources are properly accounted for and properly used;
- (2) Any indebtedness incurred for supplies or services and not satisfied by the contractor; and
- (3) Submitting, in writing, to the appropriate Government sources, address changes of the contractor and deletions when contracts are completed or terminated.

51.103 Ordering from Government supply sources.

(a) Contractors placing orders under Federal Supply Schedules shall follow the terms of the applicable schedule and authorization and include with each order—

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(2) The following statement: This order is placed under written authorization from _____ dated _____. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

(b) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the Government activity address code obtained by the contracting officer in accordance with 51.102(e) along with the contractor's assigned access code, when ordering from GSA Customer Supply Centers.

(3) Order only those items required in the performance of their contracts.

51.104 Furnishing assistance to contractors.

After receiving an activity address code, the contracting officer will notify the appropriate GSA regional office or military activity, which will contact the contractor and—

(a) Provide initial copies of ordering information and instructions; and

(b) When necessary, assist the contractor in preparing and submitting, as appropriate—

(1) The initial FEDSTRIP or MILSTRIP requisitions, the Optional Form 347, or the agency-approved forms;

(2) A completed GSA Form 457, FSS Publications Mailing List Application, so that the contractor will automatically receive current copies of required publications; or

(3) A completed GSA Form 3525, Application for Customer Supply Center Services and (Address Change).

51.105 Payment for shipments.

GSA, DOD, and VA will not forward bills to contractors for supplies ordered from Government stock until after the supplies have been shipped. Receipt of billing is sufficient evidence to establish contractor liability and to provide a basis for payment. Contracting officers should direct their contractors to make payment promptly upon receipt of billings.

51.106 Title.

(a) Title to all property acquired by the contractor under the contracting officer's authorization shall vest in the parties as

provided in the contract, unless specifically provided for otherwise.

(b) If contracts are with educational institutions and the Government Property clause at 52.245-2, Alternate II, or 52.245-5, Alternate I, is used, title to property having an acquisition cost of less than \$5,000 shall vest in the contractor as provided in the clause. Agencies may provide higher thresholds, if appropriate.

51.107 Contract clause.

The contracting officer shall insert the clause at 52.251-1, Government Supply Sources, in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source. If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate I.

Subpart 51.2—Contractor Use of Interagency Fleet Management System (IFMS) Vehicles

51.200 Scope of subpart.

This subpart prescribes policies and procedures for the use by contractors of interagency fleet management system (IFMS) vehicles and related services. In this subpart, the terms “contractors” and “contracts” include “subcontractors” and “subcontracts” (see 45.304).

51.201 Policy.

(a) If it is in the Government’s interest, the contracting officer may authorize cost-reimbursement contractors to obtain, for official purposes only, interagency fleet management system (IFMS) vehicles and related services, including—

- (1) Fuel and lubricants,
- (2) Vehicle inspection, maintenance, and repair,
- (3) Vehicle storage, and
- (4) Commercially rented vehicles for short-term use.

(b) Complete rebuilding of major components of contractor-owned or -leased equipment requires the approval of the contracting officer in each instance.

(c) Government contractors shall not be authorized to obtain interagency fleet management system (IFMS) vehicles and related services for use in performance of any contract other than a cost-reimbursement contract, except as otherwise specifically approved by the Administrator of the General Services Administration at the request of the agency involved.

51.202 Authorization.

(a) The contracting officer may authorize a cost-reimbursement contractor to obtain interagency fleet management system (IFMS) vehicles and related services, if the contracting officer has—

(1) Determined that the authorization will accomplish the agency’s contractual objectives and effect demonstrable economies;

(2) Received evidence that the contractor has obtained motor vehicle liability insurance covering bodily injury and property damage, with limits of liability as required or approved by the agency, protecting the contractor and the Government against third-party claims arising from the ownership, maintenance, or use of an interagency fleet management system vehicle (IFMS);

(3) Arranged for periodic checks to ensure that authorized contractors are using vehicles and related services exclusively under cost-reimbursement contracts;

(4) Ensured that contractors shall establish and enforce suitable penalties for their employees who use or authorize the use of Government vehicles for other than performance of Government contracts (see 41 CFR 101-38.301-1);

(5) Received a written statement that the contractor will assume, without the right of reimbursement from the Government, the cost or expense of any use of interagency fleet management vehicles (IFMS) and services not related to the performance of the contract; and

(6) Considered any recommendations of the contractor.

(b) The authorization shall—

(1) Be in writing;

(2) Cite the contract number;

(3) Specify any limitations on the authority, including its duration, and any other pertinent information; and

(4) Instruct the contractor to comply with the applicable policies and procedures provided in this subpart.

(c) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(d) Contracting officers authorizing contractor use of interagency fleet management system (IFMS) vehicles and related services subject their agencies to the responsibilities and liabilities provided in 41 CFR 101-39.4 regarding accidents and claims.

51.203 Means of obtaining service.

(a) Authorized contractors shall submit requests for interagency fleet management system (IFMS) vehicles and related services in writing to the appropriate GSA regional Federal Supply Service Bureau, Attention: Regional fleet manager, except that requests for more than five vehicles shall be submitted to:

General Services Administration
FBF
Washington DC 20406,

and not to the regions. Each request shall include the following:

(1) Two copies of the agency authorization to obtain vehicles and related services from GSA.

(2) The number of vehicles and related services required and period of use.

(3) A list of the contractor’s employees who are authorized to request vehicles and related services.

(4) A listing of the make, model, and serial numbers of contractor-owned or-leased equipment authorized to be serviced.

(5) Billing instructions and address.

(b) Contractors requesting unusual quantities of vehicles should do so as far in advance as possible to facilitate availability.

51.204 Use of interagency fleet management system (IFMS) vehicles and related services.

Contractors authorized to use interagency fleet management system (IFMS) vehicles and related services shall comply with the requirements of 41 CFR 101-39 and 41 CFR 101-38.301-1 and the operator's packet furnished with each vehicle. See 41 CFR 101-6.4 for additional guidance for home-to-work use of Government vehicles.

51.205 Contract clause.

The contracting officer shall insert the clause at 52.251-2, Interagency Fleet Management System (IFMS) Vehicles and Related Services, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contracting officer may authorize the contractor to use interagency fleet management system (IFMS) vehicles and related services.

* * * * *

**MATERIALS MANAGEMENT ACQUISITION
REGULATION**

SUBCHAPTER H—CLAUSES AND FORMS

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

- 52.000 Scope of part.
- Subpart 52.1—Instructions for Using Provisions and Clauses**
- 52.100 Scope of subpart.
- 52.101 Using Part 52.
- 52.102 Incorporating provisions and clauses.
- 52.103 Identification of provisions and clauses.
- 52.104 Procedures for modifying and completing provisions and clauses.
- 52.105 Procedures for using alternates.
- 52.106 [Reserved]
- 52.107 Provisions and clauses prescribed in Subpart 52.1.
- Subpart 52.2—Text of Provisions and Clauses**
- 52.200 Scope of subpart.
- 52.201 [Reserved]
- 52.202-1 Definitions.
- 52.203-1 [Reserved]
- 52.203-2 Certificate of Independent Price Determination.
- 52.203-3 Gratuities.
- 52.203-4 [Reserved]
- 52.203-5 Covenant Against Contingent Fees.
- 52.203-6 Restrictions on Subcontractor Sales to the Government.
- 52.203-7 Anti-Kickback Procedures.
- 52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.
- 52.203-9 [Reserved]
- 52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.
- 52.203-11 [Reserved]
- 52.203-12 [Reserved]
- 52.204-1 Approval of Contract.
- 52.204-2 Security Requirements.
- 52.204-3 Taxpayer Identification.
- 52.204-4 Printed or Copied Double-Sided on Recycled Paper.
- 52.204-5 Women-Owned Business (Other Than Small Business).
- 52.204-6 Data Universal Numbering System (DUNS) Number.
- 52.205 [Reserved]
- 52.206 [Reserved]
- 52.207-1 [Reserved]
- 52.207-2 [Reserved]
- 52.207-3 [Reserved]
- 52.207-4 Economic Purchase Quantity—Supplies.
- 52.207-5 Option to Purchase Equipment.
- 52.208-1 [Reserved]
- 52.208-2 [Reserved]
- 52.208-3 [Reserved]
- 52.208-4 Vehicle Lease Payments.
- 52.208-5 Condition of Leased Vehicles.
- 52.208-6 Marking of Leased Vehicles.
- 52.208-7 Tagging of Leased Vehicles.
- 52.208-8 Required Sources for Helium and Helium Usage Data.
- 52.208-9 Contractor Use of Mandatory Sources of Supply or Services.
- 52.209-1 Qualification Requirements.
- 52.209-2 [Reserved]
- 52.209-3 First Article Approval—Contractor Testing.
- 52.209-4 First Article Approval—Government Testing.
- 52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
- 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
- 52.210 [Reserved]
- 52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.
- 52.211-2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.
- 52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
- 52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
- 52.211-5 Material Requirements.
- 52.211-6 Brand Name or Equal.
- 52.211-7 Alternatives to Government-Unique Standards.
- 52.211-8 Time of Delivery.
- 52.211-9 Desired and Required Time of Delivery.
- 52.211-10 Commencement, Prosecution, and Completion of Work.
- 52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.
- 52.211-12 Liquidated Damages—Construction.
- 52.211-13 Time Extensions.
- 52.211-14 Notice of Priority Rating for National Defense Use.
- 52.211-15 Defense Priority and Allocation Requirements.
- 52.211-16 Variation in Quantity.
- 52.211-17 Delivery of Excess Quantities.
- 52.211-18 Variation in Estimated Quantity.
- 52.212-1 Instructions to Offerors—Commercial Items.
- 52.212-2 Evaluation—Commercial Items.

52.212-3 Offeror Representations and Certifications—Commercial Items.	52.214-35 Submission of Offers in U.S. Currency.
52.212-4 Contract Terms and Conditions—Commercial Items.	52.215-1 Instructions to Offerors—Competitive Acquisition.
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.	52.215-2 Audit and Records—Negotiation.
52.213-1 Fast Payment Procedure.	52.215-3 Request for Information or Solicitation for Planning Purposes.
52.213-2 Invoices.	52.215-4 [Reserved]
52.213-3 Notice to Supplier.	52.215-5 Facsimile Proposals.
52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).	52.215-6 Place of Performance.
52.214-1 [Reserved]	52.215-7 Annual Representations and Certifications—Negotiation.
52.214-2 [Reserved]	52.215-8 Order of Precedence—Uniform Contract Format.
52.214-3 Amendments to Invitations for Bids.	52.215-9 Changes or Additions to Make-or-Buy Program.
52.214-4 False Statements in Bids.	52.215-10 Price Reduction for Defective Cost or Pricing Data.
52.214-5 Submission of Bids.	52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.
52.214-6 Explanation to Prospective Bidders.	52.215-12 Subcontractor Cost or Pricing Data.
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	52.215-13 Subcontractor Cost or Pricing Data—Modifications.
52.214-8 [Reserved]	52.215-14 Integrity of Unit Prices.
52.214-9 Failure to Submit Bid.	52.215-15 Pension Adjustments and Asset Reversions.
52.214-10 Contract Award—Sealed Bidding.	52.215-16 Facilities Capital Cost of Money.
52.214-11 [Reserved]	52.215-17 Waiver of Facilities Capital Cost of Money.
52.214-12 Preparation of Bids.	52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.
52.214-13 Telegraphic Bids.	52.215-19 Notification of Ownership Changes.
52.214-14 Place of Performance—Sealed Bidding.	52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
52.214-15 Period for Acceptance of Bids.	52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.
52.214-16 Minimum Bid Acceptance Period.	52.216-1 Type of Contract.
52.214-17 [Reserved]	52.216-2 Economic Price Adjustment—Standard Supplies.
52.214-18 Preparation of Bids—Construction.	52.216-3 Economic Price Adjustment—Semistandard Supplies.
52.214-19 Contract Award—Sealed Bidding—Construction.	52.216-4 Economic Price Adjustment—Labor and Material.
52.214-20 Bid Samples.	52.216-5 Price Redetermination—Prospective.
52.214-21 Descriptive Literature.	52.216-6 Price Redetermination—Retroactive.
52.214-22 Evaluation of Bids for Multiple Awards.	52.216-7 Allowable Cost and Payment.
52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	52.216-8 Fixed Fee.
52.214-24 Multiple Technical Proposals.	52.216-9 Fixed Fee—Construction.
52.214-25 Step Two of Two-Step Sealed Bidding.	52.216-10 Incentive Fee.
52.214-26 Audit and Records—Sealed Bidding.	52.216-11 Cost Contract—No Fee.
52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	52.216-12 Cost-Sharing Contract—No Fee.
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	52.216-13 Allowable Cost and Payment—Facilities.
52.214-29 Order of Precedence—Sealed Bidding.	52.216-14 Allowable Cost and Payment—Facilities Use.
52.214-30 Annual Representations and Certifications—Sealed Bidding.	52.216-15 Predetermined Indirect Cost Rates.
52.214-31 Facsimile Bids.	52.216-16 Incentive Price Revision—Firm Target.
52.214-32 [Reserved]	52.216-17 Incentive Price Revision—Successive Targets.
52.214-33 [Reserved]	52.216-18 Ordering.
52.214-34 Submission of Offers in the English Language.	

FAC 2001-01 DECEMBER 21, 2001

FEDERAL ACQUISITION REGULATION

- 52.216-19 Order Limitations.
- 52.216-20 Definite Quantity.
- 52.216-21 Requirements.
- 52.216-22 Indefinite Quantity.
- 52.216-23 Execution and Commencement of Work.
- 52.216-24 Limitation of Government Liability.
- 52.216-25 Contract Definitization.
- 52.216-26 Payments of Allowable Costs Before Definitization.
- 52.216-27 Single or Multiple Awards.
- 52.216-28 Multiple Awards for Advisory and Assistance Services.
- 52.217-1 [Reserved]
- 52.217-2 Cancellation Under Multi-year Contracts.
- 52.217-3 Evaluation Exclusive of Options.
- 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
- 52.217-5 Evaluation of Options.
- 52.217-6 Option for Increased Quantity.
- 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
- 52.217-8 Option to Extend Services.
- 52.217-9 Option to Extend the Term of the Contract.
- 52.218 [Reserved]
- 52.219-1 Small Business Program Representations.
- 52.219-2 Equal Low Bids.
- 52.219-3 [Reserved]
- 52.219-4 [Reserved]
- 52.219-5 [Reserved]
- 52.219-6 [Reserved]
- 52.219-7 [Reserved]
- 52.219-8 [Reserved]
- 52.219-9 [Reserved]
- 52.219-10 [Reserved]
- 52.219-11 [Reserved]
- 52.219-12 [Reserved]
- 52.219-13 [Reserved]
- 52.219-14 [Reserved]
- 52.219-15 [Reserved]
- 52.219-16 [Reserved]
- 52.219-17 [Reserved]
- 52.219-18 [Reserved]
- 52.219-19 [Reserved]
- 52.219-20 [Reserved]
- 52.219-21 [Reserved]
- 52.219-22 [Reserved]
- 52.219-23 [Reserved]
- 52.219-24 [Reserved]
- 52.219-25 [Reserved]
- 52.219-26 [Reserved]
- 52.220 [Reserved]
- 52.221 [Reserved]
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
- 52.222-5 [Reserved]
- 52.222-6 Davis-Bacon Act.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.
- 52.222-11 Subcontracts (Labor Standards).
- 52.222-12 Contract Termination—Debarment.
- 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
- 52.222-14 Disputes Concerning Labor Standards.
- 52.222-15 Certification of Eligibility.
- 52.222-16 Approval of Wage Rates.
- 52.222-17 Labor Standards for Construction Work—Facilities Contracts.
- 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
- 52.222-19 Child Labor—Cooperation with Authorities and Remedies.
- 52.222-20 Walsh-Healey Public Contracts Act.
- 52.222-21 Prohibition of Segregated Facilities.
- 52.222-22 Previous Contracts and Compliance Reports.
- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 [Reserved]
- 52.222-29 Notification of Visa Denial.
- 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
- 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
- 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
- 52.222-33 [Reserved]
- 52.222-34 [Reserved]
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
- 52.222-36 Affirmative Action for Workers with Disabilities.
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

52.222-38 Compliance with Veterans' Employment Reporting Requirements.	52.225-4 [Reserved]
52.222-39 [Reserved]	52.225-5 [Reserved]
52.222-40 [Reserved]	52.225-6 [Reserved]
52.222-41 Service Contract Act of 1965, as Amended.	52.225-7 [Reserved]
52.222-42 Statement of Equivalent Rates for Federal Hires.	52.225-8 Duty-Free Entry.
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	52.225-9 Buy American Act—Construction Materials.
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	52.225-10 Notice of Buy American Act Requirement—Construction Materials.
52.222-45 [Reserved]	52.225-11 [Reserved]
52.222-46 Evaluation of Compensation for Professional Employees.	52.225-12 [Reserved]
52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	52.225-13 Restrictions on Certain Foreign Purchases.
52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.	52.225-14 Inconsistency between English Version and Translation of Contract.
52.222-49 Service Contract Act—Place of Performance Unknown.	52.225-15 Sanctioned European Union Country End Products.
52.222-50 [Reserved]	52.225-16 Sanctioned European Union Country Services.
52.223-1 [Reserved]	52.225-17 Evaluation of Foreign Currency Offers.
52.223-2 [Reserved]	52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.
52.223-3 Hazardous Material Identification and Material Safety Data.	52.226-2 [Reserved]
52.223-4 Recovered Material Certification.	52.227-1 Authorization and Consent.
52.223-5 [Reserved]	52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.
52.223-6 [Reserved]	52.227-3 Patent Indemnity.
52.223-7 Notice of Radioactive Materials.	52.227-4 Patent Indemnity—Construction Contracts.
52.223-8 [Reserved]	52.227-5 Waiver of Indemnity.
52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	52.227-6 Royalty Information.
52.223-10 Waste Reduction Program.	52.227-7 Patents—Notice of Government Licensee.
52.223-11 Ozone-Depleting Substances.	52.227-8 [Reserved]
52.223-12 Refrigeration Equipment and Air Conditioners.	52.227-9 Refund of Royalties.
52.223-13 Certification of Toxic Chemical Release Reporting.	52.227-10 Filing of Patent Applications—Classified Subject Matter.
52.223-14 Toxic Chemical Release Reporting.	52.227-11 Patent Rights—Retention by the Contractor (Short Form).
52.224-1 [Reserved]	52.227-12 Patent Rights—Retention by the Contractor (Long Form).
52.224-2 [Reserved]	52.227-13 Patent Rights—Acquisition by the Government.
52.225-1 Buy American Act—Supplies.	52.227-14 Rights in Data—General.
52.225-2 Buy American Act Certificate.	52.227-15 Representation of Limited Rights Data and Restricted Computer Software.
52.225-3 [Reserved]	52.227-16 Additional Data Requirements.
	52.227-17 Rights in Data—Special Works.
	52.227-18 Rights in Data—Existing Works.
	52.227-19 Commercial Computer Software—Restricted Rights.
	52.227-20 [Reserved]
	52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.
	52.227-22 Major System—Minimum Rights.

FEDERAL ACQUISITION REGULATION

- 52.227-23 Rights to Proposal Data (Technical).
- 52.228-1 Bid Guarantee.
- 52.228-2 Additional Bond Security.
- 52.228-3 [Reserved]
- 52.228-4 [Reserved]
- 52.228-5 Insurance—Work on a Government Installation.
- 52.228-6 [Reserved]
- 52.228-7 Insurance—Liability to Third Persons.
- 52.228-8 Liability and Insurance—Leased Motor Vehicles.
- 52.228-9 Cargo Insurance.
- 52.228-10 Vehicular and General Public Liability Insurance.
- 52.228-11 Pledges of Assets.
- 52.228-12 Prospective Subcontractor Requests for Bonds.
- 52.228-13 Alternative Payment Protections.
- 52.228-14 Irrevocable Letter of Credit.
- 52.228-15 Performance and Payment Bonds— Construction.
- 52.228-16 Performance and Payment Bonds—Other Than Construction.
- 52.229-1 State and Local Taxes.
- 52.229-2 North Carolina State and Local Sales and Use Tax.
- 52.229-3 Federal, State, and Local Taxes.
- 52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).
- 52.229-5 [Reserved]
- 52.229-6 Taxes—Foreign Fixed-Price Contracts.
- 52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.
- 52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.
- 52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.
- 52.229-10 [Reserved]
- 52.230-1 Cost Accounting Standards Notices and Certification.
- 52.230-2 Cost Accounting Standards.
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices.
- 52.230-4 Consistency in Cost Accounting Practices.
- 52.230-5 Cost Accounting Standards—Educational Institution.
- 52.230-6 Administration of Cost Accounting Standards.
- 52.231 [Reserved]
- 52.232-1 Payments.
- 52.232-2 Payments under Fixed-Price Research and Development Contracts.
- 52.232-3 Payments under Personal Services Contracts.
- 52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.
- 52.232-5 Payments under Fixed-Price Construction Contracts.
- 52.232-6 Payment under Communication Service Contracts with Common Carriers.
- 52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.
- 52.232-8 Discounts for Prompt Payment.
- 52.232-9 Limitation on Withholding of Payments.
- 52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.
- 52.232-11 Extras.
- 52.232-12 Advance Payments.
- 52.232-13 Notice of Progress Payments.
- 52.232-14 [Reserved]
- 52.232-15 Progress Payments Not Included.
- 52.232-16 Progress Payments.
- 52.232-17 Interest.
- 52.232-18 Availability of Funds.
- 52.232-19 Availability of Funds for the Next Fiscal Year.
- 52.232-20 Limitation of Cost.
- 52.232-21 Limitation of Cost (Facilities).
- 52.232-22 Limitation of Funds.
- 52.232-23 Assignment of Claims.
- 52.232-24 Prohibition of Assignment of Claims.
- 52.232-25 [Reserved]
- 52.232-26 [Reserved]
- 52.232-27 [Reserved]
- 52.232-28 Invitation to Propose Performance-Based Payments.
- 52.232-29 Terms for Financing of Purchases of Commercial Items.
- 52.232-30 Installment Payments for Commercial Items.
- 52.232-31 Invitation to Propose Financing Terms.
- 52.232-32 Performance-Based Payments.
- 52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.
- 52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.
- 52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.
- 52.232-36 Payment by Third Party.
- 52.232-37 Multiple Payment Arrangements.
- 52.232-38 Submission of Electronic Funds Transfer Information with Offer.
- 52.233-1 Disputes.
- 52.233-2 Service of Protest.
- 52.233-3 Protest after Award.
- 52.234-1 Industrial Resources Developed Under Defense Production Act Title III.
- 52.235 [Reserved]
- 52.236-1 Performance of Work by the Contractor.
- 52.236-2 Differing Site Conditions.
- 52.236-3 Site Investigation and Conditions Affecting the Work.
- 52.236-4 Physical Data.
- 52.236-5 Material and Workmanship.
- 52.236-6 Superintendence by the Contractor.

MATERIALS MANAGEMENT ACQUISITION REGULATION

52.236-7	Permits and Responsibilities.	52.241-9	Connection Charge.
52.236-8	Other Contracts.	52.241-10	Termination Liability.
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	52.241-11	Multiple Service Locations.
52.236-10	Operations and Storage Areas.	52.241-12	Nonrefundable, Nonrecurring Service Charge.
52.236-11	Use and Possession Prior to Completion.	52.241-13	Capital Credits.
52.236-12	Cleaning Up.	52.242-1	Notice of Intent to Disallow Costs.
52.236-13	Accident Prevention.	52.242-2	Production Progress Reports.
52.236-14	Availability and Use of Utility Services.	52.242-3	Penalties for Unallowable Costs.
52.236-15	Schedules for Construction Contracts.	52.242-4	Certification of Final Indirect Costs.
52.236-16	Quantity Surveys.	52.242-5	[Reserved]
52.236-17	Layout of Work.	52.242-6	[Reserved]
52.236-18	Work Oversight in Cost-Reimbursement Construction Contracts.	52.242-7	[Reserved]
52.236-19	Organization and Direction of the Work.	52.242-8	[Reserved]
52.236-20	[Reserved]	52.242-9	[Reserved]
52.236-21	Specifications and Drawings for Construction.	52.242-10	F.o.b. Origin—Government Bills of Lading or Prepaid Postage.
52.236-22	Design Within Funding Limitations.	52.242-11	F.o.b. Origin—Government Bills of Lading or Indicia Mail.
52.236-23	Responsibility of the Architect-Engineer Contractor.	52.242-12	Report of Shipment (REPSHIP).
52.236-24	Work Oversight in Architect-Engineer Contracts.	52.242-13	Bankruptcy.
52.236-25	Requirements for Registration of Designers.	52.242-14	Suspension of Work.
52.236-26	Preconstruction Conference.	52.242-15	Stop-Work Order.
52.236-27	Site Visit (Construction).	52.242-16	Stop-Work Order—Facilities.
52.236-28	Preparation of Proposals—Construction.	52.242-17	Government Delay of Work.
52.237-1	Site Visit.	52.243-1	Changes—Fixed-Price.
52.237-2	Protection of Government Buildings, Equipment, and Vegetation.	52.243-2	Changes—Cost-Reimbursement.
52.237-3	Continuity of Services.	52.243-3	Changes—Time-and-Materials or Labor-Hours.
52.237-4	Payment by Government to Contractor.	52.243-4	Changes.
52.237-5	Payment by Contractor to Government.	52.243-5	Changes and Changed Conditions.
52.237-6	Incremental Payment by Contractor to Government.	52.243-6	Change Order Accounting.
52.237-7	Indemnification and Medical Liability Insurance.	52.243-7	Notification of Changes.
52.237-8	Restriction on Severance Payments to Foreign Nationals.	52.244-1	[Reserved]
52.237-9	[Reserved]	52.244-2	Subcontracts.
52.237-10	Identification of Uncompensated Overtime.	52.244-3	[Reserved]
52.238	[Reserved]	52.244-4	Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).
52.239-1	Privacy or Security Safeguards.	52.244-5	Competition in Subcontracting.
52.240	[Reserved]	52.244-6	Subcontracts for Commercial Items and Commercial Components.
52.241	Utility Services Provisions and Clauses.	52.245-1	Property Records.
52.241-1	Electric Service Territory Compliance Representation.	52.245-2	Government Property (Fixed-Price Contracts).
52.241-2	Order of Precedence—Utilities.	52.245-3	Identification of Government-Furnished Property.
52.241-3	Scope and Duration of Contract.	52.245-4	Government-Furnished Property (Short Form).
52.241-4	Change in Class of Service.	52.245-5	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).
52.241-5	Contractor's Facilities.	52.245-6	Liability for Government Property (Demolition Services Contracts).
52.241-6	Service Provisions.	52.245-7	Government Property (Consolidated Facilities).
52.241-7	Change in Rates or Terms and Conditions of Service for Regulated Services.	52.245-8	Liability for the Facilities.
52.241-8	Change in Rates or Terms and Conditions of Service for Unregulated Services.	52.245-9	Use and Charges.
		52.245-10	Government Property (Facilities Acquisition).
		52.245-11	Government Property (Facilities Use).

FAC 2001-13 APRIL 17, 2003

FEDERAL ACQUISITION REGULATION

- 52.245-12 Contract Purpose (Nonprofit Educational Institutions).
- 52.245-13 Accountable Facilities (Nonprofit Educational Institutions).
- 52.245-14 Use of Government Facilities.
- 52.245-15 [Reserved]
- 52.245-16 Facilities Equipment Modernization.
- 52.245-17 Special Tooling.
- 52.245-18 Special Test Equipment.
- 52.245-19 Government Property Furnished "As Is."
- 52.246-1 Contractor Inspection Requirements.
- 52.246-2 Inspection of Supplies—Fixed-Price.
- 52.246-3 Inspection of Supplies—Cost-Reimbursement.
- 52.246-4 Inspection of Services—Fixed-Price.
- 52.246-5 Inspection of Services—Cost-Reimbursement.
- 52.246-6 Inspection—Time-and-Material and Labor-Hour.
- 52.246-7 Inspection of Research and Development—Fixed-Price.
- 52.246-8 Inspection of Research and Development— Cost-Reimbursement.
- 52.246-9 Inspection of Research and Development (Short Form).
- 52.246-10 Inspection of Facilities.
- 52.246-11 Higher-Level Contract Quality Requirement.
- 52.246-12 Inspection of Construction.
- 52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.
- 52.246-14 Inspection of Transportation.
- 52.246-15 Certificate of Conformance.
- 52.246-16 Responsibility for Supplies.
- 52.246-17 Warranty of Supplies of a Noncomplex Nature.
- 52.246-18 Warranty of Supplies of a Complex Nature.
- 52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.
- 52.246-20 Warranty of Services.
- 52.246-21 Warranty of Construction.
- 52.246-22 [Reserved]
- 52.246-23 Limitation of Liability.
- 52.246-24 Limitation of Liability—High-Value Items.
- 52.246-25 Limitation of Liability—Services.
- 52.247-1 Commercial Bill of Lading Notations.
- 52.247-2 Permits, Authorities, or Franchises.
- 52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.
- 52.247-4 Inspection of Shipping and Receiving Facilities.
- 52.247-5 Familiarization with Conditions.
- 52.247-6 Financial Statement.
- 52.247-7 Freight Excluded.
- 52.247-8 Estimated Weights or Quantities Not Guaranteed.
- 52.247-9 Agreed Weight—General Freight.
- 52.247-10 Net Weight—General Freight.
- 52.247-11 Net Weight—Household Goods or Office Furniture.
- 52.247-12 Supervision, Labor, or Materials.
- 52.247-13 Accessorial Services—Moving Contracts.
- 52.247-14 Contractor Responsibility for Receipt of Shipment.
- 52.247-15 Contractor Responsibility for Loading and Unloading.
- 52.247-16 Contractor Responsibility for Returning Undelivered Freight.
- 52.247-17 Charges.
- 52.247-18 Multiple Shipments.
- 52.247-19 Stopping in Transit for Partial Unloading.
- 52.247-20 Estimated Quantities or Weights for Evaluation of Offers.
- 52.247-21 Contractor Liability for Personal Injury and/or Property Damage.
- 52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.
- 52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.
- 52.247-24 Advance Notification by the Government.
- 52.247-25 Government-Furnished Equipment With or Without Operators.
- 52.247-26 Government Direction and Marking.
- 52.247-27 Contract Not Affected by Oral Agreement.
- 52.247-28 Contractor's Invoices.
- 52.247-29 F.o.b. Origin.
- 52.247-30 F.o.b. Origin, Contractor's Facility.
- 52.247-31 F.o.b. Origin, Freight Allowed.
- 52.247-32 F.o.b. Origin, Freight Prepaid.
- 52.247-33 F.o.b. Origin, with Differentials.
- 52.247-34 F.o.b. Destination.
- 52.247-35 F.o.b. Destination, Within Consignee's Premises.
- 52.247-36 F.a.s. Vessel, Port of Shipment.
- 52.247-37 F.o.b. Vessel, Port of Shipment.
- 52.247-38 F.o.b. Inland Carrier, Point of Exportation.
- 52.247-39 F.o.b. Inland Point, Country of Importation.
- 52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.
- 52.247-41 C.& f. Destination.
- 52.247-42 C.i.f. Destination.
- 52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.
- 52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.
- 52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.
- 52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.
- 52.247-47 Evaluation—F.o.b. Origin.
- 52.247-48 F.o.b. Destination—Evidence of Shipment.
- 52.247-49 Destination Unknown.
- 52.247-50 No Evaluation of Transportation Costs.
- 52.247-51 Evaluation of Export Offers.

MATERIALS MANAGEMENT ACQUISITION REGULATION

- | | |
|--|---|
| <p>52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.</p> <p>52.247-53 Freight Classification Description.</p> <p>52.247-54 [Reserved]</p> <p>52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.</p> <p>52.247-56 Transit Arrangements.</p> <p>52.247-57 Transportation Transit Privilege Credits.</p> <p>52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.</p> <p>52.247-59 F.o.b. Origin—Carload and Truckload Shipments.</p> <p>52.247-60 Guaranteed Shipping Characteristics.</p> <p>52.247-61 F.o.b. Origin—Minimum Size of Shipments.</p> <p>52.247-62 Specific Quantities Unknown.</p> <p>52.247-63 Preference for U.S.-Flag Air Carriers.</p> <p>52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.</p> <p>52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.</p> <p>52.247-66 Returnable Cylinders.</p> <p>52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.</p> <p>52.248-1 Value Engineering.</p> <p>52.248-2 Value Engineering—Architect-Engineer.</p> <p>52.248-3 Value Engineering—Construction.</p> <p>52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).</p> <p>52.249-2 Termination for Convenience of the Government (Fixed-Price).</p> <p>52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).</p> | <p>52.249-4 Termination for Convenience of the Government (Services) (Short Form).</p> <p>52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).</p> <p>52.249-6 Termination (Cost-Reimbursement).</p> <p>52.249-7 Termination (Fixed-Price Architect-Engineer).</p> <p>52.249-8 Default (Fixed-Price Supply and Service).</p> <p>52.249-9 Default (Fixed-Price Research and Development).</p> <p>52.249-10 Default (Fixed-Price Construction).</p> <p>52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).</p> <p>52.249-12 Termination (Personal Services).</p> <p>52.249-13 Failure to Perform.</p> <p>52.249-14 Excusable Delays.</p> <p>52.250-1 Indemnification Under Public Law 85-804.</p> <p>52.251-1 Government Supply Sources.</p> <p>52.251-2 Interagency Fleet Management System Vehicles and Related Services.</p> <p>52.252-1 Solicitation Provisions Incorporated by Reference.</p> <p>52.252-2 Clauses Incorporated by Reference.</p> <p>52.252-3 Alterations in Solicitation.</p> <p>52.252-4 Alterations in Contract.</p> <p>52.252-5 Authorized Deviations in Provisions.</p> <p>52.252-6 Authorized Deviations in Clauses.</p> <p>52.253-1 Computer Generated Forms.</p> <p style="text-align: center;">Subpart 52.3—Provision and Clause Matrix</p> <p>52.300 Scope of subpart.</p> <p>52.301 Solicitation provisions and contract clauses (Matrix).</p> |
|--|---|

52.000 Scope of part.

This part—

- (a) Gives instructions for using provisions and clauses in solicitations and/or contracts;
- (b) Sets forth the solicitation provisions and contract clauses prescribed by this regulation; and
- (c) Presents a matrix listing the MMAR provisions and clauses applicable to each principal contract type and/or purpose (*e.g.*, fixed-price supply, cost-reimbursement research and development).

Subpart 52.1—Instructions for Using Provisions and Clauses

52.100 Scope of subpart.

This subpart—

- (a) Gives instructions for using Part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix;
- (b) Prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and
- (c) Describes the derivation of MMAR provisions and clauses.

52.101 Using Part 52.

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

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

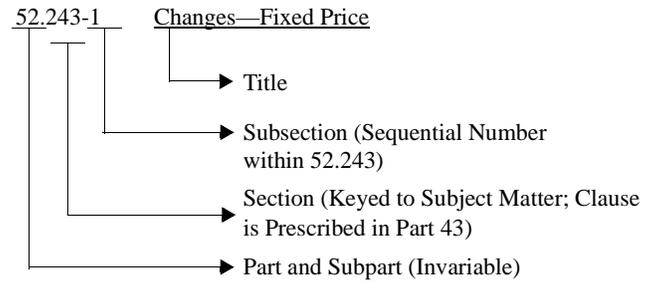


Figure 1

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

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

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

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

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

(c) *Prescriptions.* Each provision or clause in Subpart 52.2 is prescribed at that place in the MMAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other MMAR locations.

(d) *Introductory text.* Within Subpart 52.2, the introductory text of each provision or clause includes a cross-reference to the location in the MMAR subject text that prescribes its use.

(e) *Matrix.* (1) The matrix in Subpart 52.3 contains a column for each principal type and/or purpose of contract (*e.g.*, fixed-price supply, cost reimbursement research and development). The matrix lists the—

- (i) Required solicitation provisions;
- (ii) Required-when-applicable solicitation provisions;
- (iii) Optional solicitation provisions;
- (iv) Required contract clauses;
- (v) Required-when-applicable contract clauses; and

(vi) Optional contract clauses.

(2) For each provision or clause listed, the matrix provides information on—

(i) Whether incorporation by reference is or is not authorized (see 52.102);

(ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;

(iii) Its number;

(iv) The citation of the MMAR text that prescribes its use; and

(v) Its title.

(3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the “required-when-applicable” and “optional” categories, contracting officers shall refer to the MMAR text (cited in the matrix) that prescribes its use.

(4) The MMAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.

(f) *Dates.* Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; e.g., (Dec 1983). To avoid questions concerning which version of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

52.102 Incorporating provisions and clauses.

(a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—

(1) Are used with one or more alternates or on an optional basis;

(2) Are prescribed on a “substantially as follows” or “substantially the same as” basis, provided they are used verbatim;

(3) Require modification or the insertion by the Government of fill-in material (see 52.104); or

(4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.

(b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) Agency approved provisions and clauses prescribed in agency acquisition regulations, and provisions and clauses not authorized by Subpart 52.3 to be incorporated by reference, need not be incorporated in full text, provided the con-

tracting officer includes in the solicitation and contract a statement that—

(1) Identifies all provisions and clauses that require completion by the offeror or prospective contractor;

(2) Specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and

(3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.

(d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations and/or contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.

(e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations and/or contracts in full text if it is—

(1) A MMAR provision or clause that otherwise is not authorized to be incorporated by reference (see Subpart 52.3); or

(2) A provision or clause prescribed for use in an agency acquisition regulation.

(f) Provisions or clauses may not be incorporated by reference by being listed in the—

(1) Provision at 52.252-3, Alterations in Solicitations; or

(2) Clause at 52.252-4, Alterations in Contract.

52.103 Identification of provisions and clauses.

(a) Whenever any MMAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the MMAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert “(DEVIATION)” after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the (1) provision at 52.252-5, Authorized Deviations in Provisions, or (2) clause at 52.252-6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107(e) and (f).

(b) Any provision or clause that supplements the MMAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert “(DEVIATION)” after the name of the regulation.

(c) A provision or clause of the type described in 52.101(b)(2)(i)(C) shall be identified by the title, date, and the

name of the agency or suborganization within the agency that developed it.

52.104 Procedures for modifying and completing provisions and clauses.

(a) The contracting officer must not modify provisions and clauses unless the MMAR authorizes their modification. For example—

(1) “The contracting officer may use a period shorter than 60 days (but not less than 30 days) in paragraph (x) of the clause”; or

(2) “The contracting officer may substitute the words ‘task order’ for the word ‘Schedule’ wherever that word appears in the clause.”

(b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (*e.g.*, paragraph, sentence, word), to clearly indicate what is being modified.

(c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.

(d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.

(e) When completing blanks in provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

52.105 Procedures for using alternates.

(a) The MMAR accommodates a major variation in a provision or clause by use of an alternate. The MMAR prescribes alternates to a given provision or clause in the MMAR subject text where the provision or clause is prescribed. The alternates to each provision or clause are titled “Alternate I,” “Alternate II,” “Alternate III,” etc.

(b) When an alternate is used, its date shall be cited along with the date of the basic provision or clause; *e.g.*, 52.209-3 First Article Approval—Contractor Testing (Oct 1983)—Alternate I (Dec 1983).

(c) Under certain circumstances, a provision or clause may be used with two or more alternates. In these circumstances, each of the applicable alternates shall be cited, whether incorporated by reference or in full text; *e.g.*, 52.209-3 First Article

Approval—Contractor Testing (Oct 1983)—Alternate I (Dec 1983) and Alternate II (Feb 1984). However, under no circumstances may an alternate to a specific provision or clause be applied to any other provision or clause.

52.106 [Reserved]

52.107 Provisions and clauses prescribed in Subpart 52.1.

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

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

(c) The contracting officer shall insert the provision at 52.252-3, Alterations in Solicitation, in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation.

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

(e) The contracting officer shall insert the provision at 52.252-5, Authorized Deviations in Provisions, in solicitations that include any MMAR or supplemental provision with an authorized deviation. Whenever any MMAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert “(DEVIATION)” after the date of the provision.

(f) The contracting officer shall insert the clause at 52.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any MMAR or supplemental clause with an authorized deviation. Whenever any MMAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert “(DEVIATION)” after the date of the clause.

Subpart 52.2—Text of Provisions and Clauses

52.200 Scope of subpart.

This subpart sets forth the text of all MMAR provisions and clauses (see 52.101(b)(1)) and gives a cross-reference to the location in the MMAR that prescribes the provision or clause.

52.201 [Reserved]

52.202-1 Definitions.

As prescribed in section 2.201, insert the following clause:

DEFINITIONS (DEC 2001)

(a) “Agency head” or “head of the agency” means the Public Printer, unless otherwise indicated. “Agency” means the United States Government Printing Office (GPO).

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

(c) “Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and that—

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

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

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

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

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

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

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

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (c)(1), (2), (3), or (4) of this defini-

tion, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government

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

(i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

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

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

(d) “Component” means any item supplied to the Government as part of an end item or of another component, except that for use in 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225-11(a).

(e) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(f) “Nondevelopmental item” means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

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

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

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

(End of clause)

Alternate I (May 2001). If the contract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements, delete paragraph (g) of the basic clause.

52.203-1 [Reserved]

52.203-2 Certificate of Independent Price Determination.

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

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION
(APR 1985)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

(i) Those prices;

(ii) The intention to submit an offer;, or

(iii) The methods or factors used to calculate the prices offered.

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

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

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

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (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 paragraphs (a)(1) through (a)(3) of this provision
_____ [insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this 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 paragraphs (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 paragraphs (a)(1) through (a)(3) of this provision.

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

(End of provision)

52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause:

GRATUITIES (APR 1984)

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

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

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

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

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

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

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

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

(End of clause)

52.203-4 [Reserved]

52.203-5 Covenant Against Contingent Fees.

As prescribed in 3.404, insert the following clause:

COVENANT AGAINST CONTINGENT FEES (APR 1984)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to

annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

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

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

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

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

(End of clause)

52.203-6 Restrictions on Subcontractor Sales to the Government.

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

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)

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

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

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

(End of clause)

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

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

52.203-7 Anti-Kickback Procedures.

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

ANTI-KICKBACK PROCEDURES (JUL 1995)

(a) *Definitions.*

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

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

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

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

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

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

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

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

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

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

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

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

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

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the GPO Inspector General.

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

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

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

(End of clause)

52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.

As prescribed in 3.104-9(a), insert the following clause:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(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 National Defense 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 subsection 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.

(End of clause)

52.203-9 [Reserved]

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

As prescribed in 3.104-9(b), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

(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 this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

Approval of Contract.

As prescribed in 4.103, insert the following clause:

APPROVAL OF CONTRACT (DEC 1989)

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

(End of clause)

52.203-11 [Reserved]

52.203-12 [Reserved]

52.204-2 Security Requirements.

As prescribed in 4.404(a), insert the following clause:

SECURITY REQUIREMENTS (AUG 1996)

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

(b) The Contractor shall comply with—

(1) The Security Agreement (DD Form 441), including the *National Industrial Security Program Operating Manual* (DOD 5220.22-M); and

(2) Any revisions to that manual, notice of which has been furnished to the Contractor.

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

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

(End of clause)

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

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor's established policies to continue the performance of work under the contract in compliance with the change in security classification or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

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

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

Alternate II (Apr 1984). If employee identification is required for security or other reasons in a construction con-

tract or architect-engineer contract, add the following paragraph (e) to the basic clause:

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

52.204-3 Taxpayer Identification.

As prescribed in 4.905, insert the following provision:

TAXPAYER IDENTIFICATION (OCT 1998)

(a) Definitions.

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

“Taxpayer Identification Number (TIN),” as used in this provision, means the number required by the Internal Revenue Service (IRS) to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

(b) All offerors must submit the information required in paragraphs (d) through (f) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the IRS. If the resulting contract is subject to the payment reporting requirements described in Materials Management Acquisition Regulation (MMAR) 4.904, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

(c) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror’s relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in MMAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(d) Taxpayer Identification Number (TIN).

- TIN: _____.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(e) Type of organization.

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(f) Common parent.

- Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this provision.
- Name and TIN of common parent:
Name _____
TIN _____

(End of provision)

52.204-4 Printed or Copied Double-Sided on Recycled Paper.

As prescribed in 4.303, insert the following clause:

PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (AUG 2000)

(a) Definitions. As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.” For paper and paper products, postconsumer material means “postconsumer fiber” defined by the U.S. Environmental Protection Agency (EPA) as—

- (1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or
- (2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not
- (3) Fiber derived from printers’ over-runs, converters’ scrap, and over-issue publications.

“Printed or copied double-sided” means printing or reproducing a document so that information is on both sides of a sheet of paper.

“Recovered material,” for paper and paper products, is defined by EPA in its Comprehensive Procurement Guideline as “recovered fiber” and means the following materials:

- (1) Postconsumer fiber; and
- (2) Manufacturing wastes such as—

(i) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(ii) Repulped finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

(b) In accordance with Section 101 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, the Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet minimum content standards specified in Section 505 of Executive Order 13101, when not using electronic commerce methods to submit information or data to the Government.

(c) If the Contractor cannot purchase high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock meeting the 30 percent postconsumer material standard for use in submitting paper documents to the Government, it should use paper containing no less than 20 percent postconsumer material. This lesser standard should be used only when paper meeting the 30 percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards.

(End of clause)

52.204-5 Women-Owned Business (Other Than Small Business).

As prescribed in 4.603(b), insert the following provision:

WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

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

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of MMAR 52.219-1, Small Business Program Representations, of this solicitation.] The offeror represents that it is a women-owned business concern.

(End of provision)

52.204-6 Data Universal Numbering System (DUNS) Number.

As prescribed in 4.603(a), insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM (DUNS) NUMBER (JUNE 1999)

(a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” followed by the DUNS number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet Information Services.

(b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. A DUNS number will be provided immediately by telephone at no charge to the offeror. For information on obtaining a DUNS number, the offeror, if located within the United States, should call Dun and Bradstreet at 1-800-333-0505. The offeror should be prepared to provide the following information:

- (1) Company name.
- (2) Company address.
- (3) Company telephone number.
- (4) Line of business.
- (5) Chief executive officer/key manager.
- (6) Date the company was started.
- (7) Number of people employed by the company.
- (8) Company affiliation.

(c) Offerors located outside the United States may obtain the location and phone number of the local Dun and Bradstreet Information Services office from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

52.205 [Reserved]

52.206 [Reserved]

52.207-1 [Reserved]

52.207-2 [Reserved]

52.207-3 [Reserved]

52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:

ECONOMIC PURCHASE QUANTITY—SUPPLIES (AUG 1987)

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

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

Table with 4 columns: Item, Quantity, Price Quotation, Total. Title: OFFEROR RECOMMENDATIONS

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

(End of provision)

52.207-5 Option to Purchase Equipment.

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

OPTION TO PURCHASE EQUIPMENT (FEB 1995)

(a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Con-

tracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

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

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

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

52.208-1 [Reserved]

52.208-2 [Reserved]

52.208-3 [Reserved]

52.208-4 Vehicle Lease Payments.

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

VEHICLE LEASE PAYMENTS (APR 1984)

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

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

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

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

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

(End of clause)

52.208-5 Condition of Leased Vehicles.

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

CONDITION OF LEASED VEHICLES (APR 1984)

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

(a) By contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby; or

(b) Terminate the contract under the Default clause of this contract.

(End of clause)

52.208-6 Marking of Leased Vehicles.

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

MARKING OF LEASED VEHICLES (APR 1984)

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

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

advertising or endorsement by the Government of the Contractor.

(End of clause)

52.208-7 Tagging of Leased Vehicles.

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

TAGGING OF LEASED VEHICLES (MAY 1986)

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

(End of clause)

52.208-8 Required Sources for Helium and Helium Usage Data.

As prescribed in 8.505, insert the following clause:

REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2002)

(a) *Definitions.*

"Bureau of Land Management," as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

"Federal helium supplier" means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office's Authorized List of Federal Helium Suppliers available via the Internet at http://www.nm.blm.gov/www/amfo/amfo_home.html.

"Major helium requirement" means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) *Requirements*—(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—

- (i) The name of the supplier;
- (ii) The amount of helium purchased;
- (iii) The delivery date(s); and

(iv) The location where the helium was used.

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

(End of clause)

52.208-9 Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.004, insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (FEB 2002)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S. C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of

supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

- (1) National Industries for the Blind (NIB)
1901 North Beauregard Street, Suite 200
Alexandria, VA 22311-1705
(703) 998-0770
- (2) NISH
2235 Cedar Lane
Vienna, VA 22182-5200
(703) 560-6800

(End of clause)

52.209-1 Qualification Requirements.

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

QUALIFICATION REQUIREMENTS (FEB 1995)

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

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

(Name) _____

(Address) _____

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

Offeror's Name _____

Manufacturer's Name _____

Source's Name _____

Item Name _____

Service Identification _____

Test Number _____ (to the extent known)

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

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

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

(End of clause)

52.209-2 [Reserved]

52.209-3 First Article Approval—Contractor Testing.

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

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (SEPT 1989)

[Contracting Officer shall insert details]

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

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

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, includ-

ing any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) of this subsection. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

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

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

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

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

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

(End of clause)

Alternate I (Jan 1997). As prescribed in 9.308-1(a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

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

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to

this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

52.209-4 First Article Approval—Government Testing.

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

FIRST ARTICLE APPROVAL—GOVERNMENT TESTING
(SEPT 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall deliver ___unit(s) of Lot/Item ___ within ___ calendar days from the date of this contract to the Government at _____ *[insert name and address of the testing facility]* for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

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

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

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

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

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

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

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

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

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

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

(End of clause)

Alternate I (Jan 1997). As prescribed in 9.308-2(a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

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

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

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

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

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (DEC 2001)

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

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

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

(B) Have have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

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

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

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

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

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

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

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to ren-

der, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

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

(End of provision)

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

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

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

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

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

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

(1) The name of the subcontractor.

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

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

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

(End of clause)

52.210 [Reserved]

52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.

As prescribed in 11.204(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA
INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND
COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101-29
(AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service
Specifications Section, Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

52.211-2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.

As prescribed in 11.204(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE DoD INDEX OF SPECIFICATIONS AND STANDARDS (DoDISS) AND DESCRIPTIONS LISTED IN THE ACQUISITION MANAGEMENT SYSTEMS AND DATA REQUIREMENTS CONTROL LIST, DoD 5010.12-L (DEC 1999)

Copies of specifications, standards, and data item descriptions cited in this solicitation may be obtained—

(a) From the ASSIST database via the Internet at <http://assist.daps.mil>; or

(b) By submitting a request to the—

Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094

Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(End of provision)

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

As prescribed in 11.204(c), insert a provision substantially the same as the following:

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

The specifications cited in this solicitation may be obtained from:

(Activity) _____

(Complete address) _____

(Telephone number) _____

(Person to be contacted) _____

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

(End of provision)

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

As prescribed in 11.204(d), insert a provision substantially the same as the following:

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

(Activity) _____

(Complete address) _____

(Telephone number) _____

(Person to be contacted) _____

(Time(s) for viewing) _____

(End of provision)

52.211-5 Material Requirements.

As prescribed in 11.304, insert the following clause:

MATERIAL REQUIREMENTS (AUG 2000)

(a) *Definitions.*

As used in this clause—

“New” means composed of previously unused components, whether manufactured from virgin material, recovered material in the form of raw material, or materials and by-products generated from, and reused within, an original manufacturing process; *provided* that the supplies meet contract requirements, including but not limited to, performance, reliability, and life expectancy.

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

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

“Remanufactured” means factory rebuilt to original specifications.

“Virgin material” means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

(b) Unless this contract otherwise requires virgin material or supplies composed of or manufactured from virgin material, the Contractor shall provide supplies that are new, reconditioned, or remanufactured, as defined in this clause.

(c) A proposal to provide unused former Government surplus property shall include a complete description of the material, the quantity, the name of the Government agency from which acquired, and the date of acquisition.

(d) A proposal to provide used, reconditioned, or remanufactured supplies shall include a detailed description of such supplies and shall be submitted to the Contracting Officer for approval.

(e) Used, reconditioned, or remanufactured supplies, or unused former Government surplus property, may be used in contract performance if the Contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use.

(End of clause)

52.211-6 Brand Name or Equal.

As prescribed in 11.107(a), insert the following provision:

BRAND NAME OR EQUAL (AUG 1999)

(a) If an item in this solicitation is identified as “brand name or equal,” the purchase description reflects the characteristics and level of quality that will satisfy the Government’s needs. The salient physical, functional, or performance characteristics that “equal” products must meet are specified in the solicitation.

(b) To be considered for award, offers of “equal” products, including “equal” products of the brand name manufacturer, must—

(1) Meet the salient physical, functional, or performance characteristic specified in this solicitation;

(2) Clearly identify the item by—

(i) Brand name, if any; and

(ii) Make or model number;

(3) Include descriptive literature such as illustrations, drawings, or a clear reference to previously furnished descriptive data or information available to the Contracting Officer; and

(4) Clearly describe any modifications the offeror plans to make in a product to make it conform to the solicitation requirements. Mark any descriptive material to clearly show the modifications.

(c) The Contracting Officer will evaluate “equal” products on the basis of information furnished by the offeror or identified in the offer and reasonably available to the Contracting Officer. The Contracting Officer is not responsible for locating or obtaining any information not identified in the offer.

(d) Unless the offeror clearly indicates in its offer that the product being offered is an “equal” product, the offeror shall provide the brand name product referenced in the solicitation.

(End of provision)

52.211-7 Alternatives to Government-Unique Standards.

As prescribed in 11.107(b), insert the following provision:

ALTERNATIVES TO GOVERNMENT-UNIQUE STANDARDS (NOV 1999)

(a) This solicitation includes Government-unique standards. The offeror may propose voluntary consensus standards that meet the Government’s requirements as alternatives to the Government-unique standards. The Government will accept use of the voluntary consensus standard instead of the Government-unique standard if it meets the Government’s requirements unless inconsistent with law or otherwise impractical.

(b) If an alternative standard is proposed, the offeror must furnish data and/or information regarding the alternative in sufficient detail for the Government to determine if it meets the Government’s requirements. Acceptance of the alternative standard is a unilateral decision made solely at the discretion of the Government.

(c) Offers that do not comply with the Government-unique standards specified in this solicitation may be determined to be nonresponsive or unacceptable. The offeror may submit an offer that complies with the Government-unique standards specified in this solicitation, in addition to any proposed alternative standard(s).

(End of provision)

52.211-8 Time of Delivery.

As prescribed in 11.404(a)(2), insert the following clause:

TIME OF DELIVERY (JUNE 1997)

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

REQUIRED DELIVERY SCHEDULE		
<i>[Contracting Officer insert specific details]</i>		
ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

OFFEROR'S PROPOSED DELIVERY SCHEDULE		
ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required deliv-

ery date, the offer will be considered nonresponsive and rejected.

(End of clause)

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

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

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

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

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

52.211-9 Desired and Required Time of Delivery.

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

DESIRED AND REQUIRED TIME OF DELIVERY (JUNE 1997)

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

DESIRED DELIVERY SCHEDULE		
<i>[Contracting Officer insert specific details]</i>		
ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

REQUIRED DELIVERY SCHEDULE		
<i>[Contracting Officer insert specific details]</i>		
ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

OFFEROR'S PROPOSED DELIVERY SCHEDULE		
<i>[Contracting Officer insert specific details]</i>		
ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT

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

beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (1) five calendar days for delivery of the award through the ordinary mails, or (2) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

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

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

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

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by _____ *[Contracting Officer insert date]*. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; provided, that the Contractor promptly acknowledges receipt of notice of award.

Alternate III (Apr 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph

(b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading of the third column of paragraph (a) of the basic clause.

52.211-10 Commencement, Prosecution, and Completion of Work.

As prescribed in 11.404(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

COMMENCEMENT, PROSECUTION, AND COMPLETION OF
WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within _____ [*Contracting Officer insert number*] calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than _____.* The time stated for completion shall include final cleanup of the premises.

(End of clause)

* The Contracting Officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date.

Alternate I (Apr 1984). If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, add the following paragraph to the basic clause:

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by _____ [*Contracting Officer insert date*]. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 11.503(a), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR
RESEARCH AND DEVELOPMENT (SEPT 2000)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, the Contractor shall, in place of actual damages, pay to the Govern-

ment liquidated damages of \$_____ per calendar day of delay [*Contracting Officer insert amount*].

(b) If the Government terminates this contract in whole or in part under the Default—Fixed-Price Supply and Service clause, the Contractor is liable for liquidated damages accruing until the Government reasonably obtains delivery or performance of similar supplies or services. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(c) The Contractor will not be charged with liquidated damages when the delay in delivery or performance is beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

52.211-12 Liquidated Damages—Construction.

As prescribed in 11.503(b), insert the following clause in solicitations and contracts:

LIQUIDATED DAMAGES—CONSTRUCTION (SEPT 2000)

(a) If the Contractor fails to complete the work within the time specified in the contract, the Contractor shall pay liquidated damages to the Government in the amount of _____ [*Contracting Officer insert amount*] for each calendar day of delay until the work is completed or accepted.

(b) If the Government terminates the Contractor’s right to proceed, liquidated damages will continue to accrue until the work is completed. These liquidated damages are in addition to excess costs of repurchase under the Termination clause.

(End of clause)

52.211-13 Time Extensions.

As prescribed in 11.503(c), insert the following clause:

TIME EXTENSIONS (SEPT 2000)

Time extensions for contract changes will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements related to the changed work and that the remaining contract completion dates for all other portions of the work will not be altered. The change order also may provide an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

52.211-14 Notice of Priority Rating for National Defense Use.

As prescribed in 11.604(a), insert the following provision:

NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE
USE (SEPT 1990)

Any contract awarded as a result of this solicitation will be
 DX rated order; DO rated order certified for national
defense use under the Defense Priorities and Allocations Sys-
tem (DPAS) (15 CFR 700), and the Contractor will be
required to follow all of the requirements of this regulation.
[Contracting Officer check appropriate box.]

(End of provision)

52.211-15 Defense Priority and Allocation Requirements.

As prescribed in 11.604(b), insert the following clause:

DEFENSE PRIORITY AND ALLOCATION REQUIREMENT
(SEPT 1990)

This is a rated order certified for national defense use, and
the Contractor shall follow all the requirements of the
Defense Priorities and Allocations System regulation
(15 CFR 700).

(End of clause)

52.211-16 Variation in Quantity.

As prescribed in 11.703(a), insert the following clause:

VARIATION IN QUANTITY (APR 1984)

(a) A variation in the quantity of any item called for by this
contract will not be accepted unless the variation has been
caused by conditions of loading, shipping, or packing, or
allowances in manufacturing processes, and then only to the
extent, if any, specified in paragraph (b) of this clause.

(b) The permissible variation shall be limited to:

___ Percent increase [Contracting Officer insert percentage]

___ Percent decrease [Contracting Officer insert percentage]

This increase or decrease shall apply to _____.*

(End of clause)

* Contracting Officer shall insert in the blank the designa-
tion(s) to which the percentages apply, such as—

- (1) The total contract quantity;
- (2) Item 1 only;
- (3) Each quantity specified in the delivery schedule;
- (4) The total item quantity for each destination; or
- (5) The total quantity of each item without regard to destina-
tion.

(End of clause)

52.211-17 Delivery of Excess Quantities.

As prescribed in 11.703(b), insert the following clause:

DELIVERY OF EXCESS QUANTITIES (SEPT 1989)

The Contractor is responsible for the delivery of each item
quantity within allowable variations, if any. If the Contractor
delivers and the Government receives quantities of any item
in excess of the quantity called for (after considering any
allowable variation in quantity), such excess quantities will
be treated as being delivered for the convenience of the Con-
tractor. The Government may retain such excess quantities up
to \$250 in value without compensating the Contractor there-
for, and the Contractor waives all right, title, or interests
therein. Quantities in excess of \$250 will, at the option of the
Government, either be returned at the Contractor's expense or
retained and paid for by the Government at the contract unit
price.

(End of clause)

52.211-18 Variation in Estimated Quantity.

As prescribed in 11.703(c), insert the following clause in
solicitations and contracts when a fixed-price construction
contract is contemplated that authorizes a variation in the esti-
mated quantity of unit-priced items:

VARIATION IN ESTIMATED QUANTITY (APR 1984)

If the quantity of a unit-priced item in this contract is an
estimated quantity and the actual quantity of the unit-priced
item varies more than 15 percent above or below the esti-
mated quantity, an equitable adjustment in the contract price
shall be made upon demand of either party. The equitable
adjustment shall be based upon any increase or decrease in
costs due solely to the variation above 115 percent or below
85 percent of the estimated quantity. If the quantity variation
is such as to cause an increase in the time necessary for com-
pletion, the Contractor may request, in writing, an extension
of time, to be received by the Contracting Officer within 10
days from the beginning of the delay, or within such further
period as may be granted by the Contracting Officer before
the date of final settlement of the contract. Upon the receipt
of a written request for an extension, the Contracting Officer
shall ascertain the facts and make an adjustment for extending
the completion date as, in the judgement of the Contracting
Officer, is justified.

(End of clause)

52.212-1 Instructions to Offerors—Commercial Items.

As prescribed in 12.301(b)(1), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMMERCIAL ITEMS
(OCT 2000)

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) “Remit to” address, if different than mailing address;
- (8) A completed copy of the representations and certifications at MMAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in

this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.* (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1)(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service Specifications Section
Suite 8100
470 East L'Enfant Plaza, SW
Washington, DC 20407

Telephone (202) 619-8925
Facsimile (202) 619-8978.

(2) The DoD Index of Specifications and Standards (DoDISS) and documents listed in it may be obtained from the—

Department of Defense Single Stock Point (DoDSSP)
Building 4, Section D
700 Robbins Avenue
Philadelphia, PA 19111-5094

Telephone (215) 697-2667/2179
Facsimile (215) 697-1462.

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Order forms, pricing information, and customer support information may be obtained—

(A) By telephone at (215) 697-2667/2179; or

(B) Through the DoDSSP Internet site at <http://assist.daps.mil>.

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to offers exceeding \$25,000.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" followed by the DUNS number that identifies the offeror's name and address. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet to obtain one at no charge. An offeror within the United States may call 1-800-333-0505. The offeror may obtain more information regarding the DUNS number, including locations of local Dun and Bradstreet Information Services offices for offerors located outside the United States, from the Internet home page at <http://www.customerservice@dnb.com>. If an offeror is unable to locate a local service center, it may send an e-mail to Dun and Bradstreet at globalinfo@mail.dnb.com.

(End of provision)

52.212-2 Evaluation—Commercial Items.

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see MMAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance, when combined, are _____ [Contracting Officer state, in accordance with MMAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.]

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—
COMMERCIAL ITEMS (JULY 2002)

(a) *Definitions.* As used in this provision:

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the

criteria in 13 CFR part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) *Taxpayer Identification Number (TIN)* (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (b)(3) through (b)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in MMAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

TIN: _____.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other _____.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:
Name _____
TIN _____.

(c) Offerors must complete the following representations when the resulting contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. Check all that apply.

(1) *Small business concern.* The offeror represents as part of its offer that it is, is not a small business concern.

(2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(8) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.]

(i) [Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry groups (DIGs).] The offeror represents as part of its offer that it is, is not an emerging small business.

(ii) [Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).] Offeror represents as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

Number of Employees	Average Annual Gross Revenues
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51—100	<input type="checkbox"/> \$1,000,001—\$2 million
<input type="checkbox"/> 101—250	<input type="checkbox"/> \$2,000,001—\$3.5 million
<input type="checkbox"/> 251—500	<input type="checkbox"/> \$3,500,001—\$5 million
<input type="checkbox"/> 501—750	<input type="checkbox"/> \$5,000,001—\$10 million
<input type="checkbox"/> 751—1,000	<input type="checkbox"/> \$10,000,001—\$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(d) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid

to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(e) *Buy American Act Certificate*. (Applies only if the clause at Materials Management Acquisition Regulation (MMAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—Supplies” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of MMAR Part 25.

(f)(1) *Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate*. (Applies only if the clause at MMAR 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States.

(ii) The offeror certifies that the following supplies are NAFTA country end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

NAFTA Country or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of MMAR Part 25.

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (MAY 2002)*. If Alternate I to the clause at MMAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian End Products:

Line Item No.

[List as necessary]

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (MAY 2002)*. If Alternate II to the clause at MMAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—North American Free Trade Agreement—Israeli Trade Act”:

Canadian or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(4) *Trade Agreements Certificate.* (Applies only if the clause at MMAR 52.225-5, Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(4)(ii) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or NAFTA country end product, as defined in the clause of this solicitation entitled "Trade Agreements."

(ii) The offeror shall list as other end products those end products that are not U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products.

Other End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of MMAR Part 25. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(g) *Certification Regarding Debarment, Suspension or Ineligibility for Award.* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

(1) Are, are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency; and

(2) Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; and

(3) Are, are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(h) *Certification Regarding Knowledge of Child Labor for Listed End Products.* [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

(ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

Alternate I (Apr 2002). As prescribed in 12.301(b)(2), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

[The offeror shall check the category in which its ownership falls]:

___ Black American.

___ Hispanic American.

___ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

___ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

____ Individual/concern, other than one of the preceding.

Alternate II (Oct 2000). As prescribed in 12.301(b)(2), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address is, is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged business concern that is participating in the joint venture.

52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (FEB 2002)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at MMAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at MMAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper

invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work per-

formed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.

(9) The specification.

(End of clause)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—
COMMERCIAL ITEMS (MAY 2002)

(a) The Contractor shall comply with the following MMAR clauses, which are incorporated in this contract by reference, to implement provisions of law or executive orders applicable to acquisitions of commercial items:

(1) 52.222-3, Convict Labor (E.O. 11755).

(2) 52.233-3, Protest after Award (31 U.S.C. 3553).

(b) The Contractor shall comply with the MMAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer must check as appropriate.]

— (1) 52.203-6, Restrictions on Subcontractor Sales to the Government, with Alternate I (41 U.S.C. 253g and 10 U.S.C. 2402).

— (2) 52.222-21, Prohibition of Segregated Facilities (Feb 1999)

— (3) 52.222-26, Equal Opportunity (E.O. 11246).

— (4) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212)

— (5) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793).

— (6) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212).

— (7) 52.222-19, Child Labor—Cooperation with Authorities and Remedies.

— (8)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (42 U.S.C. 6962(c)(3)(A)(ii)).

— (ii) Alternate I of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).

— (9) 52.225-1, Buy American Act—Supplies (41 U.S.C. 10a - 10d).

— (10)(i) 52.225-3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (41 U.S.C. 10a - 10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

— (ii) Alternate I of 52.225-3.

— (iii) Alternate II of 52.225-3.

— (11) 52.225-5, Trade Agreements (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).

— (12) 52.225-13, Restriction on Certain Foreign Purchases (E.O. 12722, 12724, 13059, 13067, 13121, and 13129).

— (13) 52.225-15, Sanctioned European Union Country End Products (E.O. 12849).

— (14) 52.225-16, Sanctioned European Union Country Services (E.O. 12849).

— (15) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (31 U.S.C. 3332).

— (16) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (31 U.S.C. 3332).

— (17) 52.232-36, Payment by Third Party (31 U.S.C. 3332).

— (18) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

— (19)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

— (ii) Alternate I of 52.247-64.

(c) The Contractor shall comply with the MMAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

[Contracting Officer check as appropriate.]

— (1) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

— (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

— (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

— (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

— (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in MMAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any MMAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—

(1) 52.222-26, Equal Opportunity (E.O. 11246);

(2) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (38 U.S.C. 4212);

(3) 52.222-36, Affirmative Action for Workers with Disabilities (29 U.S.C. 793);

(4) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996); and

(5) 52.222-41, Service Contract Act of 1965, As Amended (41 U.S.C. 351, *et seq.*).

(End of clause)

Alternate I (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

FAST PAYMENT PROCEDURE (FEB 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier

(or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice “FAST PAY.”

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters “NO RECEIVING REPORT PREPARED.”

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

(E) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

- (i) Ship-To Point.
- (ii) Mark-For Point.
- (iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers “FAST PAY.”

(End of clause)

52.213-2 Invoices.

As prescribed in 13.302-5(b), insert the following clause:

INVOICES (APR 1984)

The Contractor’s invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

- (a) The starting and ending dates of the subscription delivery; and
- (b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in 13.302-5(c), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.302-5(d), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (SEPT 2002)

(a) The Contractor shall comply with the following Materials Management Acquisition Regulation (MMAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

- (i) 52.222-3, Convict Labor (AUG 1996) (E.O. 11755).
- (ii) 52.222-21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).
- (iii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
- (iv) 52.225-13, Restrictions on Certain Foreign Purchases (JULY 2000) (E.O.’s 12722, 12724, 13059, 13067, 13121, and 13129).
- (v) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) Listed below are additional clauses that apply:

- (i) 52.232-1, Payments (APR 1984).
- (ii) 52.232-8, Discounts for Prompt Payment (FEB 2002).
- (iii) 52.232-11, Extras (APR 1984).
- (iv) 52.232-25, Prompt Payment (FEB 2002).
- (v) 52.233-1, Disputes (JULY 2002).
- (vi) 52.244-6, Subcontracts for Commercial Items (DEC 2001).
- (vii) 52.253-1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following MMAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

- (i) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (SEPT 2002) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)
- (ii) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).
- (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico,

the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) 52.222-41, Service Contract Act of 1965, As Amended (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

(vi) 52.223-5, Pollution Prevention and Right-to-Know Information (APR 1998) (E.O. 12856) (Applies to services performed on Federal facilities).

(vii) 52.225-1, Buy American Act—Supplies (MAY 2002) (41 U.S.C. 10a - 10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use within the United States if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000).

(viii) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (MAY 1999). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(ix) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(x) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (JUNE 2000) (46 U.S.C. 1241). (Applies to supplies transported by ocean vessels.)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over \$25,000).

(ii) 52.211-17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (JUNE 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *MMAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(e) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to pro-

FAC 2001-09 SEPTEMBER 30, 2002

vide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Gov-

ernment improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

52.214-1 [Reserved]

52.214-2 [Reserved]

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.201-6(b)(1), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 False Statements in Bids.

As prescribed in 14.201-6(b)(2), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

52.214-5 Submission of Bids.

As prescribed in 14.201-6(c)(1), insert the following provision:

SUBMISSION OF BIDS (MAR 1997)

(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 and date 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 paragraphs (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) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

52.214-6 Explanation to Prospective Bidders.

As prescribed in 14.201-6(c)(2), insert the following provision:

EXPLANATION TO PROSPECTIVE BIDDERS (APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

As prescribed in 14.201-6(c)(3), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (NOV 1999)

(a) Bidders are responsible for submitting bids, and any modifications or withdrawals, so as to reach the Government office designated in the invitation for bids (IFB) by the time specified in the IFB. If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids are due.

(b)(1) Any bid, modification, or withdrawal received at the Government office designated in the IFB after the exact time specified for receipt of bids is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late bid would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the IFB, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of bids; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for

receipt of bids and was under the Government's control prior to the time set for receipt of bids.

(2) However, 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.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the bid wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that bids cannot be received at the Government office designated for receipt of bids by the exact time specified in the IFB and urgent Government requirements preclude amendment of the IFB, 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 work day on which normal Government processes resume.

(e) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. If the IFB 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 at 52.214-31, Facsimile Bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

52.214-8 [Reserved]

52.214-9 Failure to Submit Bid.

As prescribed in 14.201-6(e)(1), insert the following provision in invitations for bids:

FAILURE TO SUBMIT BID (JULY 1995)

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

52.214-10 Contract Award—Sealed Bidding.

As prescribed in 14.201-6(e)(2), insert the following provision:

CONTRACT AWARD—SEALED BIDDING (JULY 1990)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may—

(1) Reject any or all bids;

(2) Accept other than the lowest bid; and

(3) Waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214-11 [Reserved]

52.214-12 Preparation of Bids.

As prescribed in 14.201-6(f), insert the following provision:

PREPARATION OF BIDS (APR 1984)

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the “Amount” column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

52.214-13 Telegraphic Bids.

As prescribed in 14.201-6(g)(1), insert the following provision:

TELEGRAPHIC BIDS (APR 1984)

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bids.

(e) The term “telegraphic bids,” as used in this provision, includes mailgrams.

(End of provision)

Alternate I (Nov 1988). As prescribed in 14.201-6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

52.214-14 Place of Performance—Sealed Bidding.

As prescribed in 14.201-6(h), insert the following provision:

PLACE OF PERFORMANCE—SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, intends, does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks “intends” in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

PLACE OF PERFORMANCE (STREET, ADDRESS, CITY COUNTY, STATE, ZIP CODE)	NAME AND ADDRESS OF OWNER AND OPERATOR OF THE PLANT OR FACILITY IF OTHER THAN BIDDER

(End of provision)

52.214-15 Period for Acceptance of Bids.

As prescribed in 14.201-6(i), insert the following provision:

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within _____ calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

52.214-16 Minimum Bid Acceptance Period.

As prescribed in 14.201-6(j), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) “Acceptance period,” as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of _____ calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government's minimum requirement.

The bidder allows the following acceptance period:
_____ calendar days.

(e) A bid allowing less than the Government's minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within—

(1) The acceptance period stated in paragraph (c) of this clause; or

(2) Any longer acceptance period stated in paragraph (d) of this clause.

(End of provision)

52.214-17 [Reserved]

52.214-18 Preparation of Bids—Construction.

As prescribed in 14.201-6(l), insert the following provision:

PREPARATION OF BIDS—CONSTRUCTION (APR 1984)

(a) Bids must be—

(1) Submitted on the forms furnished by the Government or on copies of those forms, and

(2) *Manually signed*. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

(1) Lump sum bidding;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

52.214-19 Contract Award—Sealed Bidding—Construction.

As prescribed in 14.201-6(m), insert the following provision:

CONTRACT AWARD—SEALED BIDDING—CONSTRUCTION
(AUG 1996)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(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 a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

52.214-20 Bid Samples.

As prescribed in 14.201-6(o)(1), insert the following provision:

BID SAMPLES (APR 2002)

(a) "Bid sample" means a product sample required to be submitted by a bidder to show those characteristics of the offered products that cannot adequately be described by specifications, purchase descriptions, or the invitation for bid (*e.g.*, balance, facility of use, or pattern).

(b) Bidders must furnish bid samples as part of the bid. The Government must receive the bid samples by the time specified in the invitation for bids. If the bidder fails to submit samples on time, the Government will reject the bid, except that the Contracting Officer will consider a late sample sent by mail under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The Government will test or evaluate bid samples to determine compliance with all the characteristics listed for examination in this solicitation. The Government will reject the bid when the sample fails to conform to the required characteristics. Products delivered under any resulting contract must conform to—

(1) The approved sample for the characteristics listed for test or evaluation; and

(2) The specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be—

- (1) Submitted at no expense to the Government; and
- (2) Returned at the bidder's request and expense, unless they are destroyed during preaward testing.

(End of provision)

Alternate I (May 2002). As prescribed in 14.201-6(o)(2)(i), insert the following Alternate I:

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the _____ [as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office]; and

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

Alternate II (May 2002). As prescribed in 14.201-6(o)(2)(ii), insert the following Alternate II:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if—

(1) The bid states that the offered product is the same as a product offered by the bidder to the _____ [as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office] on a previous acquisition;

(2) The Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation; and

(3) The product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

52.214-21 Descriptive Literature.

As prescribed in 14.201-6(p)(1), insert the following provision:

DESCRIPTIVE LITERATURE (APR 2002)

(a) "Descriptive literature," as used in this provision, means information furnished by a bidder, such as cuts, illustrations, drawings, and brochures, that shows a product's characteristics or construction or explains its operation. The term includes only that information required to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

(b) Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product

offered that are specified elsewhere in the solicitation and pertain to significant elements such as—

- (1) Design;
- (2) Materials;
- (3) Components;
- (4) Performance characteristics; and
- (5) Methods of manufacture, assembly, construction, or operation.

(c) Descriptive literature, required elsewhere in this solicitation, shall be—

- (1) Identified to show the item(s) of the offer to which it applies; and
- (2) Received by the time specified in this solicitation.

(d) If the bidder fails to submit descriptive literature on time, the Government will reject the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(e) If the descriptive literature fails to show that the product offered conforms to the requirements of the solicitation, the Government will reject the bid.

(End of provision)

Alternate I (Apr 2002). As prescribed in 14.201-6(p)(2), add the following paragraphs (f) and (g) to the basic provision:

(f) The Contracting Officer may waive the requirement for furnishing descriptive literature if the offeror has supplied a product that is the same as that required by this solicitation under a prior contract. A bidder that requests a waiver of this requirement shall provide the following information:

Prior contract number _____

Date of prior contract _____

Contract line item number of product supplied _____

Name and address of Government activity to which delivery was made _____

Date of final delivery of product supplied _____

(g) Bidders shall submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (f) of this provision. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. The Government will disregard a bidder's request for a waiver under paragraph (f) if that bidder has submitted the descriptive literature requested under this solicitation.

52.214-22 Evaluation of Bids for Multiple Awards.

As prescribed in 14.201-6(q), insert the following provision:

EVALUATION OF BIDS FOR MULTIPLE AWARDS
(MAR 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

As prescribed in 14.201-6(r), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, REVISIONS, AND
WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-
STEP SEALED BIDDING (NOV 1999)

(a) Bidders are responsible for submitting technical proposals, and any modifications or revisions, so as to reach the Government office designated in the request for technical proposals by the time specified in the invitation for bids (IFB). If no time is specified in the IFB, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that bids or revisions are due.

(b)(1) Any technical proposal under step one of two-step sealed bidding, modification, revision, or withdrawal of such proposal received at the Government office designated in the request for technical proposals after the exact time specified for receipt will not be considered unless the Contracting Officer determines that accepting the late technical proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the request for technical proposals, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt; or

(iii) It is the only proposal received and it is negotiated under Part 15 of the Materials Management Acquisition Regulation.

(2) However, 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.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the technical proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that technical proposals cannot be received at the Government office designated for receipt of technical proposals by the exact time specified in the request for technical proposals, and urgent Government requirements preclude amendment of the request for technical proposals, the time specified for receipt of technical proposals will be deemed to be extended to the same time of day specified in the request for technical proposals on the first work day on which normal Government processes resume.

(e) Technical proposals may be withdrawn by written notice received at any time before the exact time set for receipt of technical proposals. If the request for technical proposals authorizes facsimile technical proposals, they may be withdrawn via facsimile received at any time before the exact time set for receipt of proposals, subject to the conditions specified in the provision at 52.214-31, Facsimile Bids. A technical proposal may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of technical proposals, the identity of the person requesting withdrawal is established and the person signs a receipt for the technical proposal.

(End of provision)

52.214-24 Multiple Technical Proposals.

As prescribed in 14.201-6(s), insert the following provision:

MULTIPLE TECHNICAL PROPOSALS (APR 1984)

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

52.214-25 Step Two of Two-Step Sealed Bidding.

As prescribed in 14.201-6(t), insert the following provision:

STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under Subpart 14.5 of the Materials Management Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step one of this acquisition under _____ [the Contracting Officer shall insert the identification of the step-one request for technical proposals].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

52.214-26 Audit and Records—Sealed Bidding.

As prescribed in 14.201-7(a), insert the following clause:

AUDIT AND RECORDS—SEALED BIDDING (OCT 1997)

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor’s records, including computations and projections, related to—

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Materials Management Acquisition Regulation (MMAR). MMAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in MMAR 15.403-4(a)(1) for submission of cost or pricing data.

(End of clause)

52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at MMAR 15.403-4(a)(1), except that this clause does not apply to a modification if an exception under MMAR 15.403-1(b) applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

(End of clause)

52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts:

SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4(a)(1); and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under MMAR 15.403-1(b) applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in MMAR subsection 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at MMAR 15.403-4(a)(1).

(End of clause)

52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201-7(d), insert the following clause:

ORDER OF PRECEDENCE—SEALED BIDDING (JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications);
- (b) Representations and other instructions;

- (c) Contract clauses;
- (d) Other documents, exhibits, and attachments; and
- (e) The specifications.

(End of clause)

**52.214-30 Annual Representations and Certifications—
Sealed Bidding.**

As prescribed in 14.201-6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—
SEALED BIDDING (JAN 1997)

The bidder has (check the appropriate block):

(a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*], which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if "none," so state*]: _____

(b) Enclosed its annual representations and certifications.

(End of provision)

52.214-31 Facsimile Bids.

As prescribed in 14.201-6(v), insert the following provision:

FACSIMILE BIDS (DEC 1989)

(a) *Definition.* "Facsimile bid," as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment: _____

(2) Compatibility characteristics of receiving facsimile equipment (*e.g.*, make and model number, receiving speed, communications protocol): _____

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

52.214-32 [Reserved]

52.214-33 [Reserved]

52.214-34 Submission of Offers in the English Language.

As prescribed in 14.201-6(w), insert the following provision:

SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE
(APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

52.214-35 Submission of Offers in U.S. Currency.

As prescribed in 14.201-6(x), insert the following provision:

SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S. dollars shall be rejected.

(End of provision)

52.215-1 Instructions to Offerors—Competitive Acquisition.

As prescribed in 15.209(a), insert the following provision:

INSTRUCTIONS TO OFFERORS—COMPETITIVE
ACQUISITION (MAY 2001)

(a) *Definitions.* As used in this provision—

“Discussions” are negotiations that occur after establishment of the competitive range that may, at the Contracting Officer’s discretion, result in the offeror being allowed to revise its proposal.

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Proposal modification” is a change made to a proposal before the solicitation’s closing date and time, or made in response to an amendment, or made to correct a mistake at any time before award.

“Proposal revision” is a change to a proposal made after the solicitation closing date, at the request of or as allowed by a Contracting Officer as the result of negotiations.

“Time,” if stated as a number of days, is calculated using calendar days, unless otherwise specified, and will include Saturdays, Sundays, and legal holidays. However, if the last day falls on a Saturday, Sunday, or legal holiday, then the period shall include the next working day.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions that are not amended remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, modification, revision, and withdrawal of proposals.* (1) Unless other methods (e.g., electronic commerce or facsimile) are permitted in the solicitation, proposals and modifications to proposals shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time and date specified for receipt, the solicitation number, and the name and address of the offeror. Offerors using commercial carriers should ensure that the proposal is marked on the outermost wrapper with the information in paragraphs (c)(1)(i) and (c)(1)(ii) of this provision.

(2) The first page of the proposal must show—

- (i) The solicitation number;
- (ii) The name, address, and telephone and facsimile numbers of the offeror (and electronic address if available);
- (iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;
- (iv) Names, titles, and telephone and facsimile numbers (and electronic addresses if available) of persons autho-

rized to negotiate on the offeror’s behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the proposal. Proposals signed by an agent shall be accompanied by evidence of that agent’s authority, unless that evidence has been previously furnished to the issuing office.

(3) *Submission, modification, revision, and withdrawal of proposals.* (i) Offerors are responsible for submitting proposals, and any modifications or revisions, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposal or revision is due.

(ii)(A) Any proposal, modification, or revision received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(1) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(2) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(3) It is the only proposal received.

(B) However, 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.

(iii) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(iv) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(v) Proposals may be withdrawn by written notice received at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. 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 at 52.215-5, Facsimile Proposals. Proposals may be withdrawn in person by an offeror or an authorized representative, if the identity of the person requesting withdrawal is established and the person signs a receipt for the proposal before award.

(4) Unless otherwise specified in the solicitation, the offeror may propose to provide any item or combination of items.

(5) Offerors shall submit proposals in response to this solicitation in English, unless otherwise permitted by the solicitation, and in U.S. dollars, unless the provision at MMAR 52.225-17, Evaluation of Foreign Currency Offers, is included in the solicitation.

(6) Offerors may submit modifications to their proposals at any time before the solicitation closing date and time, and may submit modifications in response to an amendment, or to correct a mistake at any time before award.

(7) Offerors may submit revised proposals only if requested or allowed by the Contracting Officer.

(8) Proposals may be withdrawn at any time before award. Withdrawals are effective upon receipt of notice by the Contracting Officer.

(d) *Offer expiration date.* Proposals in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror).

(e) *Restriction on disclosure and use of data.* Offerors that include in their proposals data that they do not want disclosed to the public for any purpose, or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award.* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value after evaluation in accordance with the factors and sub-factors in the solicitation.

(2) The Government may reject any or all proposals if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in proposals received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except clarifications as described in MMAR 15.306(a)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(6) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(7) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(8) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(9) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(10) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(11) The Government may disclose the following information in postaward debriefings to other offerors:

(i) The overall evaluated cost or price and technical rating of the successful offeror;

(ii) The overall ranking of all offerors, when any ranking was developed by the agency during source selection;

(iii) A summary of the rationale for award; and

(iv) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

Alternate I (Oct 1997). As prescribed in 15.209(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(f)(4) The Government intends to evaluate proposals and award a contract after conducting discussions with offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial proposal should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Oct 1997). As prescribed in 15.209(a)(2), add a paragraph (c)(9) substantially the same as the following to the basic clause:

(c)(9) Offerors may submit proposals that depart from stated requirements. Such proposals shall clearly identify why the acceptance of the proposal would be advantageous to the Government. Any deviations from the terms and conditions of the solicitation, as well as the comparative advantage to the Government, shall be clearly identified and explicitly defined. The Government reserves the right to amend the solicitation to allow all offerors an opportunity to submit revised proposals based on the revised requirements.

52.215-2 Audit and Records—Negotiation.

As prescribed in 15.209(b), insert the following clause:

AUDIT AND RECORDS—NEGOTIATION (JUNE 1999)

(a) As used in this clause, “records” includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification;

or
(4) Performance of the contract, subcontract or modification.

(d) *Comptroller General*—(1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Contractor's directly pertinent records involving transactions related to this contract or a subcontract hereunder.

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—

(1) The effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports; and

(2) The data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Materials Management Acquisition Regulation (MMAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all sub-

contracts under this contract that exceed the simplified acquisition threshold, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

Alternate I (Jan 1997). As prescribed in 15.209(b)(2), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

Alternate II (Apr 1998). As prescribed in 15.209(b)(3), add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, “Audits of States, Local Governments, and Nonprofit Organizations,” apply to this contract.

Alternate III (June 1999). As prescribed in 15.209(b)(4), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly, and substitute the following paragraph (e) for the redesignated paragraph (e) of the basic clause:

(e) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), and (d) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Materials Management Acquisition Regulation (MMAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) If this contract is completely or partially terminated, the Contractor shall make available the records relating to the work terminated until 3 years after any resulting final termination settlement; and

(2) The Contractor shall make available records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this contract until such appeals, litigation, or claims are finally resolved.

52.215-3 Request for Information or Solicitation for Planning Purposes.

As prescribed in 15.209(c), insert the following provision:

REQUEST FOR INFORMATION OR SOLICITATION FOR PLANNING PURPOSES (OCT 1997)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as an allowable cost under other contracts as provided in subsection 31.205-18, Bid and proposal costs, of the Materials Management Acquisition Regulation.

(b) Although “proposal” and “offeror” are used in this Request for Information, your response will be treated as information only. It shall not be used as a proposal.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

52.215-4 [Reserved]

52.215-5 Facsimile Proposals.

As prescribed in 15.209(e), insert the following provision:

FACSIMILE PROPOSALS (OCT 1997)

(a) *Definition.* “Facsimile proposal,” as used in this provision, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile proposals are subject to the same rules as paper proposals.

(c) The telephone number of receiving facsimile equipment is: [*insert telephone number*].

(d) If any portion of a facsimile proposal received by the Contracting Officer is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document—

(1) The Contracting Officer immediately shall notify the offeror and permit the offeror to resubmit the proposal;

(2) The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror; and

(3) The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complies with the time and format requirements for resubmission prescribed by the Contracting Officer.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete original signed proposal.

(End of provision)

52.215-6 Place of Performance.

As prescribed in 15.209(f), insert the following provision:

PLACE OF PERFORMANCE (OCT 1997)

(a) The offeror or respondent, in the performance of any contract resulting from this solicitation, intends, does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or respondent as indicated in this proposal or response to request for information.

(b) If the offeror or respondent checks “intends” in paragraph (a) of this provision, it shall insert in the following spaces the required information:

PLACE OF PERFORMANCE (STREET ADDRESS, CITY, STATE, COUNTY, ZIP CODE)	NAME AND ADDRESS OF OWNER AND OPERATOR OF THE PLANT OR FACILITY IF OTHER THAN OFFEROR OR RESPONDENT
_____	_____
_____	_____

(End of provision)

52.215-7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.209(g), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—
NEGOTIATION (OCT 1997)

The offeror has [*check the appropriate block*]:

[] (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] that are incorporated herein by reference, and are current, accurate, and complete as of the date of this proposal, except as follows [*insert changes that affect only this proposal; if “none,” so state*]:

[] (b) Enclosed its annual representations and certifications.

(End of provision)

52.215-8 Order of Precedence—Uniform Contract Format.

As prescribed in 15.209(h), insert the following clause:

ORDER OF PRECEDENCE—UNIFORM CONTRACT FORMAT
(OCT 1997)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

(End of clause)

52.215-9 Changes or Additions to Make-or-Buy Program.

As prescribed in 15.408(a), insert the following clause:

CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM
(OCT 1997)

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing, and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any “make” items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time—

(1) Notify the Contracting Officer of each proposed addition; and

(2) Provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor's receipt of the Contracting Officer's written approval.

(End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(a)(1) add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data when permitted and necessary to support evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

Alternate II (Oct 1997). As prescribed in 15.408(a)(2), add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall—

(1) Support its proposal with cost or pricing data to permit evaluation; and

(2) After approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract's total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause of this contract.

52.215-10 Price Reduction for Defective Cost or Pricing Data.

As prescribed in 15.408(b), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING
DATA (OCT 1997)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because—

(1) The Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(c)(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and

belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.

As prescribed in 15.408(c), insert the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING
DATA—MODIFICATIONS (OCT 1997)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4, except that this clause does not apply to any modification if an exception under MMAR 15.403-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contract-

tor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-12 Subcontractor Cost or Pricing Data.

As prescribed in 15.408(d), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under MMAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in MMAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at MMAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at MMAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

52.215-13 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.408(e), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—
MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at MMAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under MMAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in MMAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at MMAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

52.215-14 Integrity of Unit Prices.

As prescribed in 15.408(f)(1), insert the following clause:

INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in MMAR Part 2; construction or architect-engineer services under MMAR Part 36; utility services under MMAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215-15 Pension Adjustments and Asset Reversions.

As prescribed in 15.408(g), insert the following clause:

PENSION ADJUSTMENTS AND ASSET REVERSIONS
(DEC 1998)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12) for contracts and subcontracts that are subject to Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99). For contracts and subcontracts that are not subject to CAS, the adjustment amount shall be the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS-covered contracts and subcontracts that are subject to Materials Management Acquisition Regulation (MMAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to MMAR Subpart 31.2.

(d) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of MMAR 15.408(g).

(End of clause)

52.215-16 Facilities Capital Cost of Money.

As prescribed in 15.408(h), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (OCT 1997)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Materials Management Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

52.215-17 Waiver of Facilities Capital Cost of Money.

As prescribed in 15.408(i), insert the following clause:

WAIVER OF FACILITIES CAPITAL COST OF MONEY (OCT 1997)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (OCT 1997)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by MMAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirements of MMAR 15.408(j).

(End of clause)

52.215-19 Notification of Ownership Changes.

As prescribed in 15.408(k), insert the following clause:

NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the ACO or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of MMAR 15.408(k).

(End of clause)

52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

As prescribed in 15.408(l), insert the following provision:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at a minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is ade-

quate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall prepare and submit cost or pricing data and supporting attachments in accordance with Table 15-2 of MMAR 15.408.

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by MMAR 15.406-2.

(End of provision)

Alternate I (Oct 1997). As prescribed in 15.408(l), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data and supporting attachments in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct 1997). As prescribed in 15.408(l), add the following paragraph (c) to the basic provision (if Alternate II is also used, redesignate the following paragraph as paragraph (d)).

(c) Submit the cost portion of the proposal via the following electronic media: [*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*]

Alternate IV (Oct 1997). As prescribed in 15.408(l), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: [*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.*]

52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.

As prescribed in 15.408(m), insert the following clause:

REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1997)

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at MMAR 15.403-4 on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Information on modifications of contracts or subcontracts for commercial items.* (A) If—

(1) The original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition or prices set by law or regulation, or was a contract or subcontract for the acquisition of a commercial item; and

(2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a com-

mercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor shall provide, at a minimum, information on prices at which the same item or similar items have previously been sold that is adequate for evaluating the reasonableness of the price of the modification. Such information may include—

(1) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities.

(2) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market.

(3) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data and supporting attachments in accordance with Table 15-2 of MMAR 15.408.

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by MMAR 15.406-2.

(End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(m), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

(b)(1) The Contractor shall submit cost or pricing data and supporting attachments prepared in the following format:

Alternate II (Oct 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

Alternate III (Oct 1997). As prescribed in 15.408(m), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate the following paragraph as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *[Insert media format]*

Alternate IV (Oct 1997). As prescribed in 15.408(m), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *[Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.403-3.]*

52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision:

TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a _____
[Contracting Officer insert specific type of contract] contract
resulting from this solicitation.

(End of provision)

52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in paragraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES
(JAN 1997)

(a) The Contractor warrants that the unit price stated in the Schedule for _____ [offeror insert Schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that—

(1) Is an established catalog or market price for a commercial item sold in substantial quantities to the general public; and

(2) Is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective—

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), insert the following clause. The clause may be modified by increasing the 10 percent limit on aggregate increases specified in paragraph (c)(1), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—SEMISTANDARD
SUPPLIES (JAN 1997)

(a) The Contractor warrants that the supplies identified as line items _____ [offeror insert Schedule line item number] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective—

(i) On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or

(ii) If the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price,

increased to the extent provided by paragraph (c) of this clause.

(End of clause)

52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203-4(c)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in paragraph (c)(4), upon approval by the chief of the contracting office.

ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (JAN 1997)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under paragraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for—

(i) Supplies or services for which the production cost is not affected by such changes;

(ii) Changes in rates or unit prices other than those shown in the Schedule; or

(iii) Changes in the quantities of labor or material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Materials Management Acquisition Regulation (MMAR), whichever is earlier.

(End of clause)

52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, insert the following clause:

PRICE REDETERMINATION—PROSPECTIVE (OCT 1997)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that—

(1) The prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed; and

(2) In no event shall the total amount paid under this contract exceed any ceiling price included in the contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Materials Management Acquisition Regulation (MMAR) in effect on the date of this contract.

(c) *Price redetermination periods.* For the purpose of price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date

of the contract to _____, (see Note (1)) and the second and each succeeding period shall extend for _____ [*insert appropriate number*] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than _____ nor less than _____ (see Note (2)) days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services in the format of Table 15-2, MMAR 15.408, or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the _____ month (see Note (3)) before the submission of proposed prices in the format of Table 15-2, MMAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (d)(1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data

submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the pur-

pose of this paragraph (h)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by paragraph (h)(1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (h)(1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (h)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (h)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (f), (g), and (h) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or

by agreement, this decision shall be treated as an executed contract modification. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

NOTES:

- (1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.
- (2) Insert the number of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.
- (3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, insert the following clause:

PRICE REDETERMINATION—RETROACTIVE (OCT 1997)

(a) *General.* The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed _____ [*insert dollar amount of ceiling price*].

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Materials Management Acquisition Regulation (MMAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

- (i) Proposed prices;
- (ii) A statement in the format of Table 15-2, MMAR 15.408, or in any other form on which the parties may agree, of all costs incurred in performing the contract; and
- (iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by paragraph (c)(1) of this section within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall

be repaid to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price determination.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price redetermination under this contract has been completed.

(1) Within 45 days after the end of the quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor), a statement, cumulative from the beginning of the contract, showing—

- (i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;
- (ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;
- (iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by

the Government and for which final prices have not been established; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (g)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (g)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.

(j) *Termination.* If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (DEC 2002)

(a) *Invoicing.* (1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Materials Management Acquisition Regulation (MMAR) Subpart 31.2 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

(2) Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"*] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(b) *Reimbursing costs.* (1) For the purpose of reimbursing allowable costs (except as provided in paragraph (b)(2) of this clause, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—

(i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(B) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;

(C) Direct labor;

(D) Direct travel;

(E) Other direct in-house costs; and

(F) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

(3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.

(4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(d) *Final indirect cost rates.* (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Materials Management Acquisition Regulation (MMAR) in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which

the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(5) Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(6)(i) If the Contractor fails to submit a completion invoice or voucher within the time specified in paragraph (d)(5) of this clause, the Contracting Officer may—

(A) Determine the amounts due to the Contractor under the contract; and

(B) Record this determination in a unilateral modification to the contract.

(ii) This determination constitutes the final decision of the Contracting Officer in accordance with the Disputes clause.

(e) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(f) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in MMAR 42.708(a) are satisfied.

(g) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(5) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

(2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—

(i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (Feb 1997). As prescribed in 16.307(a)(2), substitute the following paragraph (b)(1)(iii) for paragraph (b)(1)(iii) of the basic clause:

(iii) The amount of progress and other payments to the Contractor's subcontractors that either have been paid, or that the Contractor is required to pay pursuant to the clause of this contract entitled "Prompt Payment for Construction Contracts." Payments shall be made by cash, check, or other form of payment to the Contractor's subcontractors under similar cost standards.

52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause:

FIXED FEE (MAR 1997)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause:

FIXED FEE—CONSTRUCTION (MAR 1997)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) of this section.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause:

INCENTIVE FEE (MAR 1997)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) of this clause.

(1) “Target cost,” as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(2) “Target fee,” as used in this contract, means the fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) of this clause.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed 15 percent of the applicable fee or \$100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years’ settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor’s past performance related to the submission and settlement of final indirect cost rate proposals.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by _____ [*Contracting Officer insert Contractor’s participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by _____ [*Contracting Officer insert Contractor’s participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than _____ [*Contracting Officer insert percentage*] percent or less than _____ [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) of this clause, and within the minimum and maximum fee limitations in paragraph (e)(1) of this clause, when the total allowable cost is increased or decreased as a consequence of—

- (i) Payments made under assignments; or
- (ii) Claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, “total allowable cost” shall not include allowable costs arising out of—

- (i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;
- (ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor’s being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;
- (iii) Any direct cost attributed to the Contractor’s involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;
- (iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in “total allowable cost” for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) *Contract modification.* The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) *Inconsistencies.* In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)

52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract. This clause may be modified by substituting “\$10,000” in lieu of “\$100,000” as the maximum reserve in paragraph (b) if the Contractor is a nonprofit organization.

COST CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay the Contractor a fee for performing this contract.

(b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (Apr 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the Contracting Officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated. This clause may be modified by substituting “\$10,000” in lieu of “\$100,000” as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST SHARING CONTRACT—NO FEE (APR 1984)

(a) The Government shall not pay to the Contractor a fee for performing this contract.

(b) After paying 80 percent of the Government’s share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government’s interest. This reserve shall not exceed one percent of the Government’s share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (Apr 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

ALLOWABLE COST AND PAYMENT—FACILITIES
(FEB 2002)

(a) General. (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Materials Management Acquisition Regulation (MMAR) in effect on the contract date.

(2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursable under it.

(b) *Invoicing.* (1) The Government will make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.

(2) Interim payments made prior to the final payment under the contract are contract financing payments, except interim payments if this contract contains Alternate I to the clause at 52.232-25.

(3) The designated payment office will make interim payments for contract financing on the _____ [*Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"*] day after the designated billing office receives a proper payment request. In the event that the

Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(c) *Negotiated indirect costs*. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) of this clause, allowable indirect costs under this contract shall be obtained by applying final indirect cost rates established as follows:

(1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the MMAR in effect for the period covered by the indirect cost rate proposal.

(2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal

years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements

or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

(5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.

(d) *Billing rates.* Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—

(1) Shall be the anticipated final rates; and

(2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

(e) *Quick-closeout procedures.* Quick-closeout procedures are applicable when the conditions in MMAR 42.708(a) are satisfied.

(f) *Audit.* At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—

(1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for prior overpayments or underpayments.

(g) *Assignments and releases.* The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee shall execute and deliver—

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—

(i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;

(ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of performance of this contract; *provided* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and

(iii) Claims for reimbursement of costs, including related expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (Mar 1997). If the contract is for facilities acquisition, and the Contracting Officer considers it appropriate, add the following paragraphs (g) and (h) to the basic clause, and redesignate paragraph (g) of the basic clause as paragraph (i):

(g) *Withholding.* After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold payment of allowable costs until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(h) *Final payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

52.216-14 Allowable Cost and Payment—Facilities Use.

As prescribed in 16.307(h), insert the following clause in solicitations and contracts when a facilities use contract is contemplated:

ALLOWABLE COST AND PAYMENT—FACILITIES USE (APR 1984)

(a) For the performance of any work, duty, or obligations specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Materials Management Acquisition Regulation (MMAR) in effect on the contract date.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcon-

tract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursed under it.

(End of clause)

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause:

PREDETERMINED INDIRECT COST RATES (APR 1998)

(a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.

(b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer (or cognizant Federal agency official) and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.

(2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with MMAR Subpart 31.3 in effect on the date of this contract.

(d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer (or cognizant Federal agency official) and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.

(e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer (or cognizant Federal agency official), subject to appropriate adjustment when the final rates for that period are established.

(f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be consid-

ered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.

(g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (OCT 1997)

(a) *General.* The supplies or services identified in the Schedule as Items _____ [*Contracting Officer insert Schedule line item numbers*] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars (\$_____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.

(b) *Definition.* "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Materials Management Acquisition Regulation (MMAR) in effect on the date of this contract.

(c) *Data submission.* (1) Within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this clause, the Contractor shall submit in the format of Table 15-2, MMAR 15.408, or in any other form on which the parties agree—

(i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(iii) A list of all residual inventory and an estimate of its value; and

(iv) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by paragraph (c)(1) of this clause within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the

end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Price revision.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) of this clause by applying to final negotiated cost an adjustment for profit or loss, as follows:

(1) On the basis of the information required by paragraph (c) of this clause, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:

(i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.

(ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost exceeds the total target cost.

(iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ [*Contracting Officer insert percent*] percent of the amount by which the total final negotiated cost is less than the total target cost.

(e) *Contract modification.* The total final price of the items specified in paragraph (a) of this clause shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(f) *Adjusting billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.

(2) If at any time it appears from information provided by the contractor under paragraph (g)(2) of this clause that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate

an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.

(3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) of this clause. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(g) *Quarterly limitation on payments statement.* This paragraph (g) shall apply until final price revision under this contract has been completed.

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with paragraph (d)(2) of this clause, when the amount stated under subdivision (g)(1)(ii) of this clause differs from the aggregate target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (g)(1)(iv) of this clause exceeds the sum due the Contractor, as computed in accordance with subdivisions (g)(1)(i), (ii), and (iii) of this clause, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable

tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(h) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) of this clause are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not

be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term “contract price” includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

(End of clause)

Alternate I (Apr 1984). As prescribed in 16.406(a), add the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.406(b), insert the following clause:

INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (OCT 1997)

(a) *General.* The supplies or services identified in the Schedule as Items _____ [*Contracting Officer insert line item numbers*] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of _____ dollars (\$_____). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of _____ [*Contracting Officer insert percent*] percent of the initial target cost. Any supplies or services that are to be—

(1) Ordered separately under, or otherwise added to, this contract; and

(2) Subject to price revision in accordance with this clause shall be identified as such in a modification to this contract.

(b) *Definition.* “Costs,” as used in this clause, means allowable costs in accordance with Part 31 of the Materials Management Acquisition Regulation (MMAR) in effect on the date of this contract.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within _____ [Contracting Officer insert number of days] days after the end of the month in which the Contractor has completed _____ (see Note 1), the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, in the format of Table 15-2, MMAR 15.408 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, in the format of Table 15-2, MMAR 15.408 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in paragraph (1) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by paragraphs (c)(1) and (2) of this section within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.

(d) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) of this section.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by _____ percent (see Note 2) of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided*, that in no event shall the total firm target profit be less than _____ percent or more than _____ percent [Contracting Officer insert percents] of the total initial cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less _____ percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus _____ percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph

(d) of this section within _____ [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) of this section, the Contractor shall submit in the format of Table 15-2, MMAR 15.408 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) of this section, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) of this section, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) of this section, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.

(2) The total final price shall be established by applying to the total final negotiated cost an adjustment for final profit or loss determined as agreed upon under paragraph (d)(4) of this section.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) of this section shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—

(1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) of this section. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under paragraph (i)(1) of this section that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) of this section. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under paragraph (d)(3) or (f)(2).

(1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—

(i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;

(ii) The total cost (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;

(iii) The portion of the total interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established— increased or decreased in accordance with paragraph (d)(4) of this section when the amount stated under subdivision (ii) of this section, differs from the aggregate firm target costs of the supplies or services; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (i)(1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (i)(1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term “contract price” includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

(End of clause)

NOTES:

- (1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.
- (2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

Alternate I (Apr 1984). As prescribed in 16.406(b), add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

52.216-18 Ordering.

As prescribed in 16.506(a), insert the following clause:

ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Sched-

ule. Such orders may be issued from _____ through _____ [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

52.216-19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than _____ [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of _____ [insert dollar figure or quantity];

(2) Any order for a combination of items in excess of _____ [insert dollar figure or quantity]; or

(3) A series of orders from the same ordering office within _____ days that together call for quantities exceeding the limitation in paragraph (b)(1) or (2) of this section.

(c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Materials Management Acquisition Regulation (MMAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within _____ days after issuance, with written notice stating the Contractor’s intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor’s and Government’s rights and obligations with respect to that order to the same extent as if the order were completed during the contract’s effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after _____ [insert date].

(End of clause)

52.216-21 Requirements.

As prescribed in 16.506(d), insert the following clause:

REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government’s requirements do not result in orders in the quantities described as “estimated” or “maximum” in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after _____ [insert date].

(End of clause)

Alternate I (Apr 1984). If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.

Alternate II (Apr 1984). If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

Alternate III (Oct 1995). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Govern-

ment may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

Alternate IV (Oct 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or sub-item of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

52.216-22 Indefinite Quantity.

As prescribed in 16.506(e), insert the following clause:

INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after _____ [insert date].

(End of clause)

52.216-23 Execution and Commencement of Work.

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

EXECUTION AND COMMENCEMENT OF WORK (APR 1984)

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than _____ [insert date]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

52.216-24 Limitation of Government Liability.

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

LIMITATION OF GOVERNMENT LIABILITY (APR 1984)

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding _____ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is _____ dollars.

(End of clause)

52.216-25 Contract Definitization.

As prescribed in 16.603-4(b)(3), insert the following clause:

CONTRACT DEFINITIZATION (OCT 1997)

(a) A _____ [insert specific type of contract] definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Materials Management Acquisition Regulation (MMAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable

clauses, terms, and conditions. The Contractor agrees to submit a _____ [insert specific type of proposal; e.g., fixed-price or cost-and-fee] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data]:

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31 of the MMAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the MMAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with paragraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

Alternate I (Apr 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated _____ [insert "price ceiling" or "firm fixed price"] in no event to exceed _____ [insert the proposed price upon which the award was based].

52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE
DEFINITIZATION (DEC 2002)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government will promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Materials Management Acquisition Regulation (MMAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments determined due will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be—

(1) Reduced by any amounts found by the Contracting Officer not to constitute allowable costs; or

(2) Adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

52.216-27 Single or Multiple Awards.

As prescribed in 16.506(f), insert the following provision:

SINGLE OR MULTIPLE AWARDS (OCT 1995)

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

52.216-28 Multiple Awards for Advisory and Assistance Services.

As prescribed in 16.506(g), insert the following provision:

MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

52.217-1 [Reserved]**52.217-2 Cancellation Under Multi-year Contracts.**

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTI-YEAR CONTRACTS
(OCT 1997)

(a) “Cancellation,” as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only—

(1) Costs—

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor’s claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.4 of the Materials Management Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. “Useful commercial life” means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as in the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in 17.208(b) or (c):

EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.*, options will not be included in the evaluation for award purposes.

(End of provision)

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.208(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF
CONTRACT AWARD (JUNE 1988)

Except when it is determined in accordance with MMAR 17.206(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217-5 Evaluation of Options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JULY 1990)

Except when it is determined in accordance with MMAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY—SEPARATELY
PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contract-

ing Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-8 Option to Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within _____ *[insert the period of time within which the Contracting Officer may exercise the option]*.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT
(MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within _____ *[insert the period of time within which the Contracting Officer may exercise the option]*; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days *[60 days unless a different number of days is inserted]* before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months)(years).

(End of clause)

52.218 [Reserved]**52.219-1 Small Business Program Representations.**

As prescribed in 19.307(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS
(APR 2002)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____
[insert NAICS code].

(2) The small business size standard is _____
[insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b) *Representations.* (1) The offeror represents as part of its offer that it is, is not a small business concern.

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a women-owned small business concern.

(4) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture:_____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

(c) *Definitions.* As used in this provision—

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (a) of this provision.

“Veteran-owned small business concern” means a small business concern—

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (Apr 2002). As prescribed in 19.307(a)(2), add the following paragraph (b)(7) to the basic provision:

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- _____ Black American.
- _____ Hispanic American.
- _____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- _____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- _____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- _____ Individual/concern, other than one of the preceding.

52.219-2 Equal Low Bids.

As prescribed in 19.307(c), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

- (a) This provision applies to small business concerns only.
- (b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

- 52.219-3 [Reserved]
- 52.219-4 [Reserved]
- 52.219-5 [Reserved]
- 52.219-6 [Reserved]
- 52.219-7 [Reserved]
- 52.219-8 [Reserved]
- 52.219-9 [Reserved]
- 52.219-10 [Reserved]
- 52.219-11 [Reserved]
- 52.219-12 [Reserved]
- 52.219-13 [Reserved]
- 52.219-14 [Reserved]
- 52.219-15 [Reserved]
- 52.219-16 [Reserved]
- 52.219-17 [Reserved]
- 52.219-18 [Reserved]
- 52.219-19 [Reserved]
- 52.219-20 [Reserved]
- 52.219-21 [Reserved]
- 52.219-22 [Reserved]
- 52.219-23 [Reserved]
- 52.219-24 [Reserved]
- 52.219-25 [Reserved]
- 52.219-26 [Reserved]
- 52.220 [Reserved]
- 52.221 [Reserved]

52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103-5(a), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES
(FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103-5(b), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (JULY 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed * _____ or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

* Insert either “zero” or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(End of clause)

52.222-3 Convict Labor.

As prescribed in 22.202, insert the following clause:

CONVICT LABOR (AUG 1996)

The Contractor agrees not to employ in the performance of this 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 Northern 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 this 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 this 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, Guam, American Samoa, the Commonwealth of the Northern 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 paid 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 regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 22.305, insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS
ACT—OVERTIME COMPENSATION (SEPT 2000)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation 22.300) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards Act.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards Act.

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts exceeding \$100,000 and require subcontractors to include these provisions in any lower tier subcontracts. The Contractor shall be responsible for compliance by any

subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

52.222-5 [Reserved]

52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classifi-

cation and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of

the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

52.222-7 Withholding of Funds.

As prescribed in 22.407(a), insert the following clause:

WITHHOLDING OF FUNDS (FEB 1988)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

52.222-8 Payrolls and Basic Records.

As prescribed in 22.407(a), insert the following clause:

PAYROLLS AND BASIC RECORDS (FEB 1988)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any

laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the—

Superintendent of Documents
U.S. Government Printing Office
Washington, DC 20402

The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

APPRENTICES AND TRAINEES (FEB 1988)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the reg-

istered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees*. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the

ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity*. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(End of clause)

52.222-10 Compliance with Copeland Act Requirements.

As prescribed in 22.407(a), insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)

The Contractor shall comply with the requirements of 29 CFR part 3, which are hereby incorporated by reference in this contract.

(End of clause)

52.222-11 Subcontracts (Labor Standards).

As prescribed in 22.407(a), insert the following clause:

SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

52.222-12 Contract Termination—Debarment.

As prescribed in 22.407(a), insert the following clause:

CONTRACT TERMINATION—DEBARMENT (FEB 1988)

A breach of the contract clauses entitled Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

52.222-13 Compliance with Davis-Bacon and Related Act Regulations.

As prescribed in 22.407(a), insert the following clause:

COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

52.222-14 Disputes Concerning Labor Standards.

As prescribed in 22.407(a), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-15 Certification of Eligibility.

As prescribed in 22.407(a), insert the following clause:

CERTIFICATION OF ELIGIBILITY (FEB 1988)

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(End of clause)

52.222-16 Approval of Wage Rates.

As prescribed in 22.407(b), insert the following clause:

APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

52.222-17 Labor Standards for Construction Work—Facilities Contracts.

As prescribed in 22.407(d), insert the following clause:

LABOR STANDARDS FOR CONSTRUCTION WORK—FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

(1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.

(2) Davis-Bacon Act at 52.222-6.

(3) Withholding of Funds at 52.222-7.

(4) Payrolls and Basic Records at 52.222-8.

(5) Apprentices and Trainees at 52.222-9.

- (6) Compliance with Copeland Act Requirements at 52.222-10.
- (7) Subcontracts (Labor Standards) at 52.222-11.
- (8) Contract Termination—Debarment at 52.222-12.
- (9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.
- (10) Disputes Concerning Labor Standards at 52.222-14.
- (11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.

As prescribed in 22.1505(a), insert the following provision:

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)

(a) *Definition.*

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(c) *Certification.* The Government will not make award to an offeror unless the offeror, by checking the appropriate

block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

[] (1) The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

[] (2) The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

52.222-19 Child Labor—Cooperation with Authorities and Remedies.

As prescribed in 22.1505(b), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (SEPT 2002)

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more;

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is \$56,190 or more; or

(4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$169,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision 52.222-18, Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at 52.212-3(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.* (1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in MMAR Subpart 9.

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in MMAR Subpart 9.

(End of clause)

52.222-20 Walsh-Healey Public Contracts Act.

As prescribed in 22.610, insert the following clause in solicitations and contracts covered by the Act:

WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All 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).

(End of clause)

52.222-21 Prohibition of Segregated Facilities.

As prescribed in 22.810(a)(1), insert the following clause:

PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) "Segregated facilities," as used in this clause, 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, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees 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 Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every sub-contract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

52.222-22 Previous Contracts and Compliance Reports.

As prescribed in 22.810(a)(2), insert the following provision:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

(a) It has, has not participated in a previous contract or subcontract subject the Equal Opportunity clause of this solicitation;

(b) It has, has not filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.

As prescribed in 22.810(b), insert the following provision:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR CONSTRUCTION (FEB 1999)

(a) The offeror’s attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for Minority Participation for Each Trade

[Contracting Officer shall insert goals]

Goals for Female Participation for Each Trade

[Contracting Officer shall insert goals]

These goals are applicable to all the Contractor’s construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the *Federal Register* in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor’s compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4 shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled “Affirmative Action Compliance Requirements for Construction,” and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

(1) Name, address, and telephone number of the subcontractor;

(2) Employer's identification number of the subcontractor;

(3) Estimated dollar amount of the subcontract;

(4) Estimated starting and completion dates of the subcontract; and

(5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the “covered area” is _____ [Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the state, county, and city].

(End of provision)

52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.

As prescribed in 22.810(c), insert the following provision:

PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

(End of provision)

52.222-25 Affirmative Action Compliance.

As prescribed in 22.810(d), insert the following provision:

AFFIRMATIVE ACTION COMPLIANCE (APR 1984)

The offeror represents that—

(a) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2); or

(b) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

52.222-26 Equal Opportunity.

As prescribed in 22.810(e), insert the following clause:

EQUAL OPPORTUNITY (APR 2002)

(a) *Definition.* “United States,” as used in this clause, means the 50 States, the District of Columbia, Puerto Rico,

the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(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 advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in 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 paragraphs (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 the Disputes Clause, 52.233-1.

(End of clause)

Alternate I (Feb 1999). As prescribed in 22.810(e), add the following as a preamble to the clause:

NOTICE: The following terms of this clause are waived for this contract: _____ [*Contracting Officer shall list terms*].

52.222-27 Affirmative Action Compliance Requirements for Construction.

As prescribed in 22.810(f), insert the following clause:

AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (FEB 1999)

(a) *Definitions.* “Covered area,” as used in this clause, means the geographical area described in the solicitation for this contract.

“Deputy Assistant Secretary,” as used in this clause, means the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, or a designee.

“Employer identification number,” as used in this clause, means the Federal Social Security number used on the employer’s quarterly Federal tax return, U.S. Treasury Department Form 941.

“Minority,” as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors

toward a goal in an approved plan does not excuse any Contractor’s or subcontractor’s failure to make good-faith efforts to achieve the plan’s goals.

(d) The Contractor shall implement the affirmative action procedures in paragraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor’s obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor’s compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor’s employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor’s obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations’ responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Contracting Officer when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under paragraph (g)(2) of this clause.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, lay-off, termination, or other employment decisions. Conduct review of this policy with all on-site supervisory personnel before initiating construction work at a job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user rest rooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in paragraphs (g)(1) through (16) of this clause. The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obliga-

tions under paragraphs (g)(1) through (16) of this clause, provided, the Contractor—

- (1) Actively participates in the group;
- (2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;
- (3) Ensures that concrete benefits of the program are reflected in the Contractor’s minority and female workforce participation;
- (4) Makes a good-faith effort to meet its individual goals and timetables; and
- (5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor’s, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor’s noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

- (1) Monitor all employment-related activity to ensure that the Contractor’s equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

52.222-28 [Reserved]

52.222-29 Notification of Visa Denial.

As prescribed in 22.810(g), insert the following clause:

NOTIFICATION OF VISA DENIAL (FEB 1999)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual’s race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 7325, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).

As prescribed in 22.407(e), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (NONE OR SEPARATELY SPECIFIED METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).

As prescribed in 22.407(f), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (PERCENTAGE METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Davis-Bacon Act is _____ [*Contracting Officer insert percentage rate*] percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Davis-Bacon Act by the percentage rate published in _____ [*Contracting Officer insert publication*].

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Davis-Bacon Act.

(End of clause)

52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).

As prescribed in 22.407(g), insert the following clause:

DAVIS-BACON ACT—PRICE ADJUSTMENT (ACTUAL METHOD) (DEC 2001)

(a) The wage determination issued under the Davis-Bacon Act by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.

(2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor's Davis-Bacon Act wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Davis-Bacon Act wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the

period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations shall be computed as follows:

(1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference results in a combined increase. If the difference computed results in a combined decrease, the contract unit price shall be decreased by that amount if the Contractor provides notification as provided in paragraph (e) of this clause.

(2) *Computation for contract unit price containing multiple craft hours for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be multiplied by the actual number of hours expended for each craft involved in accomplishing the unit-priced work item. The product of this computation will then be divided by the actual number of units ordered in the preceding contract period. The total of these computations for each craft will be added to the current contract unit price to obtain the new contract unit price. The extended amount for the contract line item will be obtained by multiplying the new unit price by the estimated quantity. If actual hours are not available from the preceding contract period for computation of the adjustment for a specific contract unit of work, the Contractor, in agreement with the Contracting Officer, shall estimate the total hours per craft per contract unit of work.

EXAMPLE: ASPHALT PAVING—CURRENT PRICE \$3.38 PER SQUARE YARD									
DBA Craft	New WD		Hourly rate paid		Diff.		Actual Hrs	Actual units (sq. yard)	Increase/sq. yard
Equip. Opr.	\$18.50	-	\$18.00	=	\$.50	x	600 hrs./	3,000 sq. yrd.	= \$.10
Truck Driver	\$19.00	-	\$18.25	=	\$.75	x	525 hrs./	3,000 sq. yrd.	= \$.13
Laborer	\$11.50	-	\$11.25	=	\$.25	x	750 hrs./	3,000 sq. yrd.	= \$.06
Total increase per square yard =									\$.29*
* Note: Adjustment for labor rate increases or decreases may be accompanied by social security and unemployment taxes and workers' compensation insurance.									
Current unit price		=	\$3.38		per square yard				
Add DBA price adj.			+.29						
New unit price			\$3.67		per square yard				

(End of clause)

52.222-33 [Reserved]

52.222-34 [Reserved]

52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(a)(1), insert the following clause:

EQUAL OPPORTUNITY FOR SPECIAL DISABLED
VETERANS, VETERANS OF THE VIETNAM ERA, AND
OTHER ELIGIBLE VETERANS (DEC 2001)

(a) *Definitions.* As used in this clause—

“All employment openings” means all positions except executive and top management, 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.

“Executive and top management” means any employee—

(1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

(2) Who customarily and regularly directs the work of two or more other employees;

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

“Other eligible veteran” means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

“Positions that will be filled from within the Contractor's organization” means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings 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.

“Qualified special disabled veteran” means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

“Special disabled veteran” means—

(1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—

(i) Rated at 30 percent or more; or

(ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (*i.e.*, a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

(2) A person who was discharged or released from active duty because of a service-connected disability.

“Veteran of the Vietnam era” means a person who—

(1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

(2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

(i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

(ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) *General.* (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status 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) Rate 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 apprenticeship, and on-the-job training under 38 U.S.C. 3687, 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 shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) *Listing openings.* (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

(2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings 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.

(3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency 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 agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) *Applicability.* 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, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) *Postings.* (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.

(2) The employment notices shall—

(i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and

(ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.

(3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).

(4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) *Subcontracts.* The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

(End of clause)

Alternate I (Dec 2001). As prescribed in 22.1310(a)(2), add the following as a preamble to the clause:

NOTICE: The following term(s) of this clause are waived for this contract: _____ [List term(s)].

52.222-36 Affirmative Action for Workers with Disabilities.

As prescribed in 22.1408(a), insert the following clause:

**AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES
(JUNE 1998)**

(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 disability. 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 Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) 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.

(End of clause)

Alternate I (June 1998). As prescribed in 22.1408(b), add the following as a preamble to the clause:

NOTICE: The following term(s) of this clause are waived for this contract: _____ [*List term(s)*].

52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.

As prescribed in 22.1310(b), insert the following clause:

EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS (DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and

(3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans' Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action pro-

gram at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that—

- (1) The information is voluntarily provided;
- (2) The information will be kept confidential;
- (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
- (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

52.222-38 Compliance with Veterans’ Employment Reporting Requirements.

As prescribed in 22.1310(c), insert the following provision:

COMPLIANCE WITH VETERANS’ EMPLOYMENT REPORTING REQUIREMENTS (DEC 2001)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of 38 U.S.C. 4212(d) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans), it has submitted the most recent VETS-100 Report required by that clause.

(End of provision)

52.222-39 [Reserved]

52.222-40 [Reserved]

52.222-41 Service Contract Act of 1965, as Amended.

As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) *Definitions.* “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, *et seq.*).

“Contractor,” as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee,” as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual rela-

tionship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe ben-

efits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

- (i) For each employee subject to the Act—
 - (A) Name and address and social security number;
 - (B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;
 - (C) Daily and weekly hours worked by each employee; and
 - (D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in

the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with

section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in 22.1006(b), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES
(MAY 1989)

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:
It is not a Wage Determination*

Employee Class	Monetary Wage—Fringe Benefits
_____	_____
_____	_____
_____	_____
_____	_____

(End of clause)

52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, *et seq.*), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers’ compensation insurance, but shall not otherwise

include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (FEB 2002)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise

include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

52.222-45 [Reserved]

52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in 22.1103, insert the following provision:

EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompensation of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).

As prescribed in 22.1006(d) and 22.1012-3(d)(1), insert the following clause:

SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor _____ and the _____ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotia-

tions or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.

As prescribed in 22.1006(e)(1), insert the following clause:

EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS FOR CONTRACTS FOR MAINTENANCE, CALIBRATION, AND/OR REPAIR OF CERTAIN INFORMATION TECHNOLOGY, SCIENTIFIC AND MEDICAL AND/OR OFFICE AND BUSINESS EQUIPMENT—CONTRACTOR CERTIFICATION (AUG 1996)

(a) The following certification shall be checked:

CERTIFICATION

The offeror certifies does not certify that—

(1) The items of equipment to be serviced under this contract are commercial items which are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations;

(2) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain information technology, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor and is either published or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and

(3) The Contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for equivalent employees servicing the same equipment of commercial customers.

(b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the Contractor shall notify the Contracting Officer as soon as possible.

(c) Failure to execute the certification in paragraph (a) of this clause or to contact the Contracting Officer as required in

paragraph (b) of this clause may render the bid or offer non-responsive.

(End of clause)

52.222-49 Service Contract Act—Place of Performance Unknown.

As prescribed in 22.1006(f) and 22.1009-4(c), insert the following clause:

SERVICE CONTRACT ACT—PLACE OF PERFORMANCE
UNKNOWN (MAY 1989)

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage deter-

minations have also been requested for the following: _____ [*insert places or areas*]. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by _____ [*insert time and date*].

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

52.222-50 [Reserved]

52.223-1 [Reserved]

52.223-2 [Reserved]

52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997)

(a) "Hazardous material," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material	Identification No.
<i>(If none, insert "None")</i>	
_____	_____
_____	_____
_____	_____

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with paragraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

Alternate 1 (July 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

52.223-4 Recovered Material Certification.

As prescribed in 23.406(a), insert the following provision:

RECOVERED MATERIAL CERTIFICATION (OCT 1997)

As required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(c)(3)(A)(i)), the offeror certifies, by signing this offer, that the percentage of recovered materials to be used in the performance of the contract will be

at least the amount required by the applicable contract specifications.

(End of provision)

52.223-5 [Reserved]

52.223-6 [Reserved]

52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

NOTICE OF RADIOACTIVE MATERIALS (JAN 1997)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, _____* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See MMAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government

shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

52.223-8 [Reserved]

52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

As prescribed in 23.406(b), insert the following clause:

ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA-DESIGNATED PRODUCTS (AUG 2000)

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

(1) Estimate the percentage of the total recovered material used in contract performance, including, if applicable, the percentage of postconsumer material content; and

(2) Submit this estimate to _____
[Contracting Officer complete in accordance with agency procedures].

(End of clause)

Alternate I (Aug 2000). As prescribed in 23.406(b), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

(b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

CERTIFICATION

I, _____ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated products met the applicable contract specifications.

[Signature of the Officer or Employee]

[Typed Name of the Officer or Employee]

 [Title]

 [Name of Company, Firm, or Organization]

 [Date]

(End of certification)

52.223-10 Waste Reduction Program.

As prescribed in 23.705, insert the following clause:

WASTE REDUCTION PROGRAM (AUG 2000)

(a) *Definitions.* As used in this clause—

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) The Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. The Contractor’s programs shall comply with applicable Federal, State, and local requirements, specifically including Section 6002 of the Resource Conservation and Recovery Act (42 U.S.C. 6962, *et seq.*) and implementing regulations (40 CFR part 247).

(End of clause)

52.223-11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

OZONE-DEPLETING SUBSTANCES (MAY 2001)

(a) *Definition.* “Ozone-depleting substance,” as used in this clause, means any substance the Environmental Protection Agency designates in 40 CFR part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), and (d) and 40 CFR part 82, Subpart E, as follows:

WARNING

Contains (or manufactured with, if applicable) *_____, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

* The Contractor shall insert the name of the substance(s).

(End of clause)

52.223-12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

REFRIGERATION EQUIPMENT AND AIR CONDITIONERS
 (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

52.223-13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.907(a), insert the following provision:

CERTIFICATION OF TOXIC CHEMICAL RELEASE
 REPORTING (OCT 2000)

(a) Submission of this certification is a prerequisite for making or entering into this contract.

(b) By signing this offer, the offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: [*Check each block that is applicable.*]

[] (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

[] (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

[] (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate

thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

[] (iv) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

[] (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(End of provision)

52.223-14 Toxic Chemical Release Reporting.

As prescribed in 23.907(b), insert the following clause:

TOXIC CHEMICAL RELEASE REPORTING (OCT 2000)

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) major groups 20 through 39 or their corresponding North American Industry Classification System (NAICS) sectors 31 through 33; or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall—

(i) Submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and

(ii) Continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in MMAR Part 2, the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at MMAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

52.224-1 [Reserved]

52.224-2 [Reserved]

52.225-1 Buy American Act—Supplies.

As prescribed in 25.1101(a)(1), insert the following clause:

BUY AMERICAN ACT—SUPPLIES (MAY 2002)

(a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

(End of clause)

52.225-2 Buy American Act Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

BUY AMERICAN ACT CERTIFICATE (MAY 2002)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product as defined in the clause of this solicitation entitled “Buy American Act—Supplies” and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

(b) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

52.225-3 [Reserved]

52.225-4 [Reserved]

52.225-5 [Reserved]

52.225-6 [Reserved]

52.225-7 [Reserved]

52.225-8 Duty-Free Entry.

As prescribed in 25.1101(e), insert the following clause:

DUTY-FREE ENTRY (FEB 2000)

(a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation “UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

(1) Foreign supplies;

(2) Country of origin;

(3) Contract number; and

(4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

(End of clause)

52.225-9 Buy American Act—Construction Materials.

As prescribed in 25.1102(a), insert the following clause:

**BUY AMERICAN ACT—CONSTRUCTION MATERIALS
(MAY 2002)**

(a) *Definitions.* As used in this clause—

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States and the District of Columbia, U.S. territories and possessions, Puerto Rico, the Northern Mariana Islands, and any other place subject to U.S. jurisdiction, but does not include leased bases.

(b) *Domestic preference.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of

this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

tractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]
 [Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

52.225-10 Notice of Buy American Act Requirement—Construction Materials.

As prescribed in 25.1102(b)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—CONSTRUCTION MATERIALS (MAY 2002)

(a) *Definitions.* “Construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials” (Materials Management Acquisition Regulation (MMAR) clause 52.225-9).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at MMAR 52.225-9 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at MMAR 52.225-9.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at MMAR 52.225-9, the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at MMAR 52.225-9 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at MMAR 52.225-9 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (May 2002). As prescribed in 25.1102(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability

ity of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at MMAR 52.225-9.

52.225-11 [Reserved]

52.225-12 [Reserved]

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
(JULY 2000)

(a) The Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries are Cuba, Iran, Iraq, Libya, North Korea, Sudan, the territory of Afghanistan controlled by the Taliban, and Serbia (excluding the territory of Kosovo).

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the government of Iraq.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed at 25.1103(b), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND
TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

52.225-15 Sanctioned European Union Country End Products.

As prescribed in 25.1103(c), insert the following clause:

SANCTIONED EUROPEAN UNION COUNTRY END
PRODUCTS (FEB 2000)

(a) *Definitions.* As used in this clause—

“Sanctioned European Union country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a sanctioned European Union (EU) member state; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a sanctioned EU member state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Sanctioned European Union member state” means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not deliver any sanctioned European Union country end products under this contract.

(End of clause)

52.225-16 Sanctioned European Union Country Services.

As prescribed in 25.1103(c), insert the following clause:

SANCTIONED EUROPEAN UNION COUNTRY SERVICES
(FEB 2000)

(a) *Definition.* “Sanctioned European Union member state,” as used in this clause, means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, or the United Kingdom.

(b) The Contractor shall not perform services under this contract in a sanctioned European Union member state. This prohibition does not apply to subcontracts.

(End of clause)

52.225-17 Evaluation of Foreign Currency Offers.

As prescribed in 25.1103(d), insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (FEB 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [*Contracting Officer to insert source of rate*] in effect as follows:

(a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(b) For acquisitions conducted using negotiation procedures—

(1) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(2) On the date specified for receipt of proposal revisions.

(End of provision)

52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in 26.104, insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)

(a) *Definitions.* As used in this clause:

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1452(c).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or

the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior
Bureau of Indian Affairs (BIA)
Attn: Chief, Division of Contracting and Grants
Administration
1849 C Street, NW,
MS-2626-MIB
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

52.226-2 [Reserved]

52.227-1 Authorization and Consent.

As prescribed at 27.201-2(a), insert the following clause:

AUTHORIZATION AND CONSENT (JULY 1995)

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent (1) embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract or (2) used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance. The entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent hereinabove granted.

(b) The Contractor agrees to include, and require inclusion of, this clause, suitably modified to identify the parties, in all subcontracts at any tier for supplies or services (including construction, architect-engineer services, and materials, supplies, models, samples, and design or testing services expected to exceed the simplified acquisition threshold); however, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

(End of clause)

Alternate I (Apr 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

Alternate II (Apr 1984). The following is substituted for paragraph (a) of the clause:

(a) The Government authorizes and consents to all use and manufacture in the performance of any order at any tier or subcontract at any tier placed under this contract for communication services and facilities for which rates, charges, and tariffs are *not* established by a government regulatory body, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with specifications or written provisions forming a part

of this contract or with specific written instructions given by the Contracting Officer directing the manner of performance.

52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.

As prescribed at 27.202-2, insert the following clause:

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

(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 the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed under this contract, 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 Government except where the Contractor has agreed to indemnify the Government.

(c) The Contractor agrees to include, and require inclusion of, this clause in all subcontracts at any tier for supplies or services (including construction and architect-engineer subcontracts and those for material, supplies, models, samples, or design or testing services) expected to exceed the simplified acquisition threshold at MMAR 2.101.

(End of clause)

52.227-3 Patent Indemnity.

Insert the following clause as prescribed at 27.203-1(b), 27.203-2(a), or 27.203-4(a)(2) as applicable:

PATENT INDEMNITY (APR 1984)

(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 that 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, the performance of services, or the construction, alteration, modification, or repair of real property (hereinafter referred to as “construction work”) under this contract, or out of the use or disposal by or for the account of the Government of such supplies or construction work.

(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 its defense. Further, this indemnity shall not apply to—

(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;

(2) An infringement resulting from addition to or change in supplies or components furnished or construction work performed that was made subsequent to delivery or performance; or

(3) A claimed infringement that is unreasonably settled without the consent of the Contractor, unless required by final decree of a court of competent jurisdiction.

(End of clause)

Alternate I (Apr 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall not apply to the following items:

[Contracting Officer list and/or identify the items to be excluded from this indemnity.]

Alternate II (Apr 1984). The following paragraph (c) is added to the clause:

(c) This patent indemnification shall cover the following items:

[List and/or identify the items to be included under this indemnity.]

Alternate III (July 1995). The following paragraph is added to the clause:

() As to subcontracts at any tier for communication service, this clause shall apply only to individual communication service authorizations over the simplified acquisition threshold issued under this contract and covering those communications services and facilities—

(1) That are or have been sold or offered for sale by the Contractor to the public,

(2) That can be provided over commercially available equipment, or

(3) That involve relatively minor modifications.

52.227-4 Patent Indemnity—Construction Contracts.

As prescribed at 27.203-5, insert the following clause:

PATENT INDEMNITY—CONSTRUCTION CONTRACTS
(APR 1984)

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for

infringement upon any United States patent (except a patent issued upon an application that is now or may hereafter be withheld from issue pursuant to a Secrecy Order under 35 U.S.C. 181) arising out of performing this contract or out of the use or disposal by or for the account of the Government of supplies furnished or work performed under this contract.

(End of clause)

Alternate I (Apr 1984). Designate the first paragraph as paragraph (a) and add the following to the basic clause as paragraph (b):

(b) This patent indemnification shall not apply to the following items:

[Contracting Officer specifically identify the item to be excluded.]

NOTE: Exclusion from indemnity of specified, identified patents, as distinguished from items, is the exclusive prerogative of the agency head or designee (see 27.203-6).

52.227-5 Waiver of Indemnity.

As prescribed at 27.203-6, insert the following clause:

WAIVER OF INDEMNITY (APR 1984)

Any provision or clause of this contract to the contrary notwithstanding, the Government hereby authorizes and consents to the use and manufacture, solely in performing this contract, of any invention covered by the United States patents identified below and waives indemnification by the Contractor with respect to such patents:

[Contracting Officer identify the patents by number or by other means if more appropriate.]

(End of clause)

52.227-6 Royalty Information.

As prescribed at 27.204-2, insert the following provision:

ROYALTY INFORMATION (APR 1984)

(a) *Cost or charges for royalties.* When the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

(1) Name and address of licensor.

(2) Date of license agreement.

(3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable.

(4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable.

(5) Percentage or dollar rate of royalty per unit.

- (6) Unit price of contract item.
- (7) Number of units.
- (8) Total dollar amount of royalties.

(b) *Copies of current licenses.* In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents.

(End of provision)

Alternate I (Apr 1984). Substitute the following for the introductory portion of paragraph (a) of the basic clause:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

52.227-7 Patents—Notice of Government Licensee.

As prescribed at 27.204-3(c), insert the following provision:

PATENTS—NOTICE OF GOVERNMENT LICENSEE
(APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is ____ [*Contracting Officer fill in*], and the royalty rate is ____ [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

Owner Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

52.227-8 [Reserved]

52.227-9 Refund of Royalties.

As prescribed at 27.206-2, insert the following clause. In solicitations and contracts with an incentive fee arrangement, change “price” to “target cost and target profit” wherever it appears:

REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term “royalties” as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for

rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

52.227-10 Filing of Patent Applications—Classified Subject Matter.

As prescribed at 27.207-2, insert the following clause:

FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (APR 1984)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of 35 U.S.C. 181-188, or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of

mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified “Confidential,” the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor agrees to include, and require the inclusion of, this clause in all subcontracts at any tier that cover or are likely to cover classified subject matter.

(End of clause)

52.227-11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed in 27.303(a), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (SHORT FORM) (JUNE 1997)

(a) *Definitions.* (1) “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*)

(2) “Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(3) “Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) “Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) “Small business firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) “Subject invention” means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor. (1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under paragraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the Government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; *provided, however*, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant subli-

censes of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) *Contractor action to protect the Government's interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format

should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; *provided, however*, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in pro-

ceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; *provided*, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; *provided*, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this paragraph (k)(4).

(l) *Communications.* [Complete according to agency instructions.]

(End of clause)

Alternate I (June 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: _____*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (June 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of the contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (June 1989). As prescribed in 27.303(a)(4), substitute the following in place of paragraph (k)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75 percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (June 1989). As prescribed in 27.303(a)(5), include the following paragraph in paragraph (f) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

52.227-12 Patent Rights—Retention by the Contractor (Long Form).

As prescribed at 27.303(b), insert the following clause:

PATENT RIGHTS—RETENTION BY THE CONTRACTOR (LONG FORM) (JAN 1997)

(a) *Definitions.* “Invention” means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety

of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

“Made” when used in relation to any invention means the conception or first actual reduction to practice of such invention.

“Nonprofit organization” means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

“Practical application” means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Small business firm” means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

“Subject invention” means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may elect to retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor elects to retain title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent applications by Contractor.* (1) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or within 6 months after the Contractor becomes aware that a subject invention has been made, whichever is earlier. The disclosure to the Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently

complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the Contracting Officer, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor shall elect in writing whether or not to retain title to any such invention by notifying the Federal agency at the time of disclosure or within 8 months of disclosure, as to those countries (including the United States) in which the Contractor will retain title; *provided*, that in any case where publication, on sale, or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period of election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file its initial patent application on an elected invention within 1 year after election or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor shall file patent applications in additional countries (including the European Patent Office and under the Patent Cooperation Treaty) within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to the Contracting Officer, election, and filing may, at the discretion of the funding Federal agency, be granted, and will normally be granted unless the Contracting Officer has reason to believe that a particular extension would prejudice the Government’s interest.

(d) *Conditions when the Government may obtain title.* The Contractor shall convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor elects not to retain title to a subject invention;

(2) If the Contractor fails to disclose or elect the subject invention within the times specified in paragraph (c) of this clause (the agency may only request title within 60 days after learning of the Contractor’s failure to report or elect within the specified times);

(3) In those countries in which the Contractor fails to file patent applications within the time specified in paragraph (c) of this clause; *provided*, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country; or

(4) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor.* (1) The Contractor shall retain a nonexclusive, royalty-free license throughout the world in each subject invention to which the Government obtains title except if the Contractor fails to disclose the subject invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in the Federal Property Management Regulations and agency licensing regulations (if any). This license shall not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) *Contractor action to protect the Government's interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title; and

(ii) Convey title to the Federal agency when requested under paragraph (d) of this clause and paragraph (n)(2) of this clause, and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Federal agency of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the contract) awarded by (identify the Federal agency). The Government has certain rights in this invention."

(5) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show

that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(6) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on the subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(7) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period and stating that all subject inventions have been disclosed or that there are no such inventions.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.

(8) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and no more frequently than annually, a listing of the subcontracts that have been awarded.

(9) In the event of a refusal by a prospective subcontractor to accept one of the clauses in paragraph (g)(1) or (2) of this clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontracting without the written authorization of the Contracting Officer.

(10) The Contractor shall provide, upon request, the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention for which the Contractor has retained title.

(11) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(g) *Subcontracts.* (1) The Contractor shall include the clause at 52.227-11 of the Materials Management Acquisition Regulation (MMAR), suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or nonprofit organization. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor shall include this clause (MMAR 52.227-12) in all other subcontracts, regardless of tier, for experimental, developmental, or research work.

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(h) *Reporting utilization of subject inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with paragraph (j) of this clause. To the extent data or information supplied under this paragraph is considered by the Contractor, its licensee or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it shall not disclose such information to persons outside the Government.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in MMAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* [Reserved]

(l) *Communications.* [Complete according to agency instructions.]

(m) *Other inventions.* Nothing contained in this clause shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(n) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (f)(2) and (f)(3) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer determines that an inventor has not disclosed a subject invention to the Contractor in accordance with the procedures required by paragraph (f)(5) of this clause, the Contracting Officer may, within 60 days after the determination, request title in accordance with para-

graphs (d)(2) and (d)(3) of this clause. However, if the Contractor establishes that the failure to disclose did not result from the Contractor's fault or negligence, the Contracting Officer shall not request title.

(3) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(4) Any examination of records under this paragraph shall be subject to appropriate conditions to protect the confidentiality of the information involved.

(o) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of the contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (f)(5) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (c)(1) of this clause;

(iii) Deliver acceptable interim reports pursuant to subdivision (f)(7)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (f)(8) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by paragraph (c)(1) of this clause, an acceptable final report pursuant to subdivision (f)(7)(ii) of this clause, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government right.

(End of clause)

Alternate I (June 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international

organizations pursuant to the following treaties or international agreements: _____*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (June 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreement with respect to subject inventions made after the date of the amendment.

52.227-13 Patent Rights—Acquisition by the Government.

As prescribed at 27.303(c), insert the following clause:

PATENT RIGHTS—ACQUISITION BY THE GOVERNMENT (JAN 1997)

(a) *Definitions.* “Invention,” as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

“Practical application,” as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention,” as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocations of principal rights—(1) Assignment to the Government.* The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under paragraph (b)(2) and paragraph (d) of this clause.

(2) *Greater rights determinations.* (i) The Contractor, or an employee-inventor after consultation with the Contractor, may retain greater rights than the nonexclusive license provided in paragraph (d) of this clause, in accordance with the procedures of paragraph 27.304-1(a) of the Materials Management Acquisition Regulation (MMAR). A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Head of the Contracting Agency or designee at the time of the first disclosure of the invention pursuant to paragraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract normally shall be subject to paragraph (c) of this clause, and to the reservations and conditions deemed to be appropriate by the Head of the Contracting Agency or designee.

(ii) Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and patent number and issue date for any subject invention in any country for which the Contractor has retained title.

(iii) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Minimum rights acquired by the Government.*
(1) With respect to each subject invention to which the Contractor retains principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in MMAR 27.304-1(g) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceedings undertaken by the agency in accordance with subdivision (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the agency agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subdivision (i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subdivision (ii) of this clause, and for the reporting of utilization information as required by subdivision (iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention.

(2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) *Minimum rights to the Contractor.* (1) The Contractor is hereby granted a revocable nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in paragraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the funding Federal agency except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in paragraph (c)(1) of this clause.

(e) *Invention identification, disclosures, and reports.* (1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These proce-

dures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor shall promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing subject inventions during that period, and stating that all subject inventions have been disclosed (or that there are not such inventions) and that the procedures required by paragraph (e)(1) of this section have been followed.

(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or stating that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this

clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (2) of this clause.

(5) The Contractor agrees subject to MMAR 27.302(i) that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.* (1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (e)(1) and (4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to the agency for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment (this paragraph does not apply to subcontracts).* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this paragraph;

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to subdivision (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by paragraph (e)(2) of this clause, and acceptable final report pursuant to subdivision (e)(3)(ii) of this clause, and all past due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) *Subcontracts.* (1) The Contractor shall include this clause (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, or research work. The subcontractor shall retain all rights provided for the Contractor in this clause, and the Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, the agency, subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(i) *Preference for United States industry.* Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that

would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(End of clause)

Alternate I (June 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: _____*

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (June 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

52.227-14 Rights in Data—General.

As prescribed in 27.409(a), insert the following clause with any appropriate alternates:

RIGHTS IN DATA—GENERAL (JUNE 1987)

(a) *Definitions.* “Computer software,” as used in this clause, means computer programs, computer data bases, and documentation thereof.

“Data,” as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data,” as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the

source code, algorithm, process, formulae, and flow charts of the software.

“Limited rights,” as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(2) if included in this clause.

“Limited rights data,” as used in this clause, means data (other than computer software) that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications thereof.

“Restricted computer software,” as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of such computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data,” as used in this clause, means data (other than computer software) which are of a scientific or technical nature.

“Unlimited rights,” as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause.

(c) *Copyright—(1) Data first produced in the performance of this contract.* Unless provided otherwise in paragraph (d) of this clause, the Contractor may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings or similar works. The prior, express written permission of the Contracting Officer is required to establish claim to copyright subsisting in all other data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting in its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause; *provided*, however, that if such data are computer software the Government shall acquire a copyright

license as set forth in paragraph (g)(3) of this clause if included in this contract or as otherwise may be provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) *Release, publication and use of data.* (1) The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Contractor agrees that to the extent it receives or is given access to data necessary for the performance of this contract which contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Contractor affording the Contractor 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor shall be so notified in writing. If the Contracting Officer determines, with concurrence of the

head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Contractor a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim under the Contract Disputes Act, including pursuant to the Disputes clause of this contract, as applicable, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also (i) permit correction at the Contractor's expense of incorrect notices if the Contractor identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or (ii) correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) When data other than that listed in subdivisions (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this contract and qualify as either limited rights data or restricted computer software, if the Contractor desires to continue protection of such data, the Contractor shall withhold such data and not furnish them to the Government under this contract. As a condition to this withholding, the Contractor shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(2) [Reserved]

(3) [Reserved]

(h) *Subcontracting.* The Contractor has the responsibility to obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government such rights, the Contractor shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subcontract award without further authorization.

(i) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

Alternate I (June 1987). As prescribed in 27.409(b), substitute the following definition for "Limited Rights Data" in paragraph (a) of the clause:

"Limited rights data," as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (June 1987). As prescribed in 27.409(c), insert the following paragraph (g)(2) in the clause:

(g)(2) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Contractor may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with such Notice:

LIMITED RIGHTS NOTICE (JUNE 1987)

(a) These data are submitted with limited rights under Government Contract No. _____ (and subcontract _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, with-

out written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes as set forth in 27.404(d)(1) or if none, so state.]

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (June 1987). As prescribed in 27.409(d), insert the following paragraph (g)(3)(i) in the clause:

(g)(3)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Contractor may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE (JUNE 1987)

(a) This computer software is submitted with restricted rights under Government Contract No. _____ (and subcontract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the contract.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, *provided* that the modified, combined, or adapted portions of the derivative software incorporating restricted computer software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors in accordance with paragraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE SHORT FORM (JUNE 1987)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. _____ (and subcontract, if appropriate) with _____ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Contractor includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

Alternate IV (June 1987). As prescribed in 27.409(e), substitute the following paragraph (c)(1) in the clause:

(c) *Copyright—(1) Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. When claim to copyright is made, the Contractor shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid up, nonexclusive, irrevocable worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

Alternate V (June 1987). As prescribed in 27.409(f), add the following paragraph (j) to the clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at

the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

52.227-15 Representation of Limited Rights Data and Restricted Computer Software.

As prescribed in 27.409(g), insert the following provision:

REPRESENTATION OF LIMITED RIGHTS DATA AND RESTRICTED COMPUTER SOFTWARE (MAY 1999)

(a) This solicitation sets forth the work to be performed if a contract award results, and the Government's known delivery requirements for data (as defined in MMAR 27.401). Any resulting contract may also provide the Government the option to order additional data under the Additional Data Requirements clause at 52.227-16 of the MMAR, if included in the contract. Any data delivered under the resulting contract will be subject to the Rights in Data—General clause at 52.227-14 that is to be included in this contract. Under the latter clause, a Contractor may withhold from delivery data that qualify as limited rights data or restricted computer software, and deliver form, fit, and function data in lieu thereof. The latter clause also may be used with its Alternates II and/or III to obtain delivery of limited rights data or restricted computer software, marked with limited rights or restricted rights notices, as appropriate. In addition, use of Alternate V with this latter clause provides the Government the right to inspect such data at the Contractor's facility.

(b) As an aid in determining the Government's need to include Alternate II or Alternate III in the clause at 52.227-14, Rights in Data—General, the offeror shall complete paragraph (c) of this provision to either state that none of the data qualify as limited rights data or restricted computer software, or identify, to the extent feasible, which of the data qualifies as limited rights data or restricted computer software. Any identification of limited rights data or restricted computer software in the offeror's response is not determinative of the status of such data should a contract be awarded to the offeror.

(c) The offeror has reviewed the requirements for the delivery of data or software and states [*offeror check appropriate block*]—

None of the data proposed for fulfilling such requirements qualifies as limited rights data or restricted computer software.

Data proposed for fulfilling such requirements qualify as limited rights data or restricted computer software and are identified as follows:

NOTE: “Limited rights data” and “Restricted computer software” are defined in the contract clause entitled “Rights in Data—General.”

(End of provision)

52.227-16 Additional Data Requirements.

As prescribed in 27.409(h), insert the following clause:

ADDITIONAL DATA REQUIREMENTS (JUNE 1987)

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

52.227-17 Rights in Data—Special Works.

As prescribed in 27.409(i), insert the following clause:

RIGHTS IN DATA—SPECIAL WORKS (JUNE 1987)

(a) Definitions.

“Data,” as used in this clause, means recorded information regardless of form or the medium on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

“Unlimited rights,” as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause for copyright.

(ii) The right to limit exercise of claim to copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in such data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to establish claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright—(1) Data first produced in the performance of this contract.* (i) The Contractor agrees not to assert, establish, or authorize others to assert or establish, any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When claim to copyright is made, the Contractor shall affix the appropriate copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including contract number) to such data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in subdivision (c)(1)(i) of this clause, the Contracting Officer may direct the Contractor to establish, or authorize the establishment of, claim to copyright in such data and to assign, or obtain the assignment of, such copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and which contain the copyright notice of 17 U.S.C. 401 or 402, unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use for purposes other than the performance of this contract,

nor shall the Contractor release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; nor do these provisions apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

52.227-18 Rights in Data—Existing Works.

As prescribed in 27.409(j), insert the following clause:

RIGHTS IN DATA—EXISTING WORKS (JUNE 1987)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense thereof, and obtains the Contractor's consent to the settlement of any suit or claim other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the

Government and incorporated in data to which this clause applies.

(End of clause)

52.227-19 Commercial Computer Software—Restricted Rights.

As prescribed in 27.409(k), insert the following clause:

COMMERCIAL COMPUTER SOFTWARE—RESTRICTED RIGHTS (JUNE 1987)

(a) As used in this clause, “restricted computer software” means any computer program, computer data base, or documentation thereof, that has been developed at private expense and either is a trade secret, is commercial or financial and confidential or privileged, or is published and copyrighted.

(b) Notwithstanding any provisions to the contrary contained in any Contractor's standard commercial license or lease agreement pertaining to any restricted computer software delivered under this purchase order/contract, and irrespective of whether any such agreement has been proposed prior to or after issuance of this purchase order/contract or of the fact that such agreement may be affixed to or accompany the restricted computer software upon delivery, vendor agrees that the Government shall have the rights that are set forth in paragraph (c) of this clause to use, duplicate or disclose any restricted computer software delivered under this purchase order/contract. The terms and provisions of this contract, including any commercial lease or license agreement, shall be subject to paragraph (c) of this clause and shall comply with Federal laws and the Materials Management Acquisition Regulation.

(c)(1) The restricted computer software delivered under this contract may not be used, reproduced or disclosed by the Government except as provided in paragraph (c)(2) of this clause or as expressly stated otherwise in this contract.

(2) The restricted computer software may be—

(i) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(ii) Used or copied for use in or with backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to same restrictions set forth in this purchase order/contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this purchase order/contract; and

(vi) Used or copied for use in or transferred to a replacement computer.

(3) If the restricted computer software delivered under this purchase order/contract is published and copyrighted, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in paragraph (c)(2) of this clause unless expressly stated otherwise in this purchase order/contract.

(4) To the extent feasible the Contractor shall affix a Notice substantially as follows to any restricted computer software delivered under this purchase order/contract; or, if the vendor does not, the Government has the right to do so:

NOTICE—Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract (or Purchase Order) No. _____.

(d) If any restricted computer software is delivered under this contract with the copyright notice of 17 U.S.C. 401, it will be presumed to be published and copyrighted and licensed to the Government in accordance with paragraph (c)(3) of this clause, unless a statement substantially as follows accompanies such copyright notice:

Unpublished—rights reserved under the copyright laws of the United States.

(End of clause)

52.227-20 [Reserved]

52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(q), insert the following clause:

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (JAN 1997)

(a) *Scope of clause.* This clause shall apply to all technical data (as defined in the Rights in Data—General clause included in this contract) that have been specified in this contract as being subject to this clause. It shall apply to all such data delivered, or required to be delivered, at any time during contract performance or within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth herein. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. Such corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also agrees, at the request of the Contracting Officer, to revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor may submit a request for an equitable adjustment to the terms and conditions of this contract for any revisions to technical data made pursuant to this paragraph.

(d) *Withholding of payment.* (1) At any time before final payment under this contract the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$100,000 or 5 percent of the amount of this contract, whichever is less, if in the Contracting Officer's opinion respecting any technical data that are subject to this clause, the Contractor fails to—

(i) Make timely delivery of such technical data as required by this contract;

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

(iii) Make the corrections required by paragraph (b)(2) of this clause; or

(iv) Make revisions requested under paragraph (c) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has delivered the data and/or has made the required corrections or revisions. Withholding shall not be made if the failure to make timely delivery, and/or the deficiencies relating to delivered data, arose out of causes beyond the control of the Contractor and without the fault or negligence of the Contractor.

(3) The Contracting Officer may decrease or increase the sums withheld up to the sums authorized in paragraph (d)(1) of this clause. The withholding of any amount under this paragraph, or the subsequent payment thereof, shall not be construed as a waiver of any Government rights.

(End of clause)

52.227-22 Major System—Minimum Rights.

As prescribed in 27.409(r), insert the following clause:

MAJOR SYSTEM—MINIMUM RIGHTS (JUNE 1987)

Notwithstanding any other provision of this contract, the Government shall have unlimited rights in any technical data, other than computer software, developed in the performance of this contract and relating to a major system or supplies for a major system procured or to be procured by the Government, to the extent that delivery of such technical data is required as an element of performance under this contract.

The rights of the Government under this clause are in addition to and not in lieu of its rights under the other provisions of this contract.

(End of clause)

52.227-23 Rights to Proposal Data (Technical).

As prescribed in 27.409(s), insert the following clause:

RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUNE 1987)

Except for data contained on pages _____, it is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the “Rights in Data—General” clause contained in this contract) in and to the technical data contained in the proposal dated _____, upon which this contract is based.

(End of clause)

52.228-1 Bid Guarantee.

As prescribed in 28.101-2, insert a provision or clause substantially as follows:

BID GUARANTEE (SEPT 1996)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The bidder shall furnish a bid guarantee in the form of a firm commitment, *e.g.*, bid bond supported by good and sufficient surety or sureties acceptable to the Government, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds—

(1) To unsuccessful bidders as soon as practicable after the opening of bids; and

(2) To the successful bidder upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) The amount of the bid guarantee shall be _____ percent of the bid price or \$_____, whichever is less.

(d) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or furnish executed bond(s) within 10 days after receipt of the forms by the bidder, the Contracting Officer may terminate the contract for default.

(e) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

(End of provision)

52.228-2 Additional Bond Security.

As prescribed in 28.106-4(a), insert the following clause:

ADDITIONAL BOND SECURITY (OCT 1997)

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if—

(a) Any surety upon any bond, or issuing financial institution for other security, furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government;

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer; or

(d) An irrevocable letter of credit (ILC) used as security will expire before the end of the period of required security.

If the Contractor does not furnish an acceptable extension or replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the Contracting officer has the right to immediately draw on the ILC.

(End of clause)

52.228-3 [Reserved]**52.228-4 [Reserved]****52.228-5 Insurance—Work on a Government Installation.**

As prescribed in 28.310, insert the following clause:

INSURANCE—WORK ON A GOVERNMENT INSTALLATION
(JAN 1997)

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

(End of clause)

52.228-6 [Reserved]**52.228-7 Insurance—Liability to Third Persons.**

As prescribed in 28.311-1, insert the following clause:

INSURANCE—LIABILITY TO THIRD PERSONS (MAR 1996)

(a)(1) Except as provided in paragraph (a)(2) of this clause, the Contractor shall provide and maintain workers' compensation, employer's liability, comprehensive general liability (bodily injury), comprehensive automobile liability (bodily injury and property damage) insurance, and such other insur-

ance as the Contracting Officer may require under this contract.

(2) The Contractor may, with the approval of the Contracting Officer, maintain a self-insurance program, provided that, with respect to workers' compensation, the Contractor is qualified pursuant to statutory authority.

(3) All insurance required by this paragraph shall be in a form and amount and for those periods as the Contracting Officer may require or approve and with insurers approved by the Contracting Officer.

(b) The Contractor agrees to submit for the Contracting Officer's approval, to the extent and in the manner required by the Contracting Officer, any other insurance that is maintained by the Contractor in connection with the performance of this contract and for which the Contractor seeks reimbursement.

(c) The Contractor shall be reimbursed—

(1) For that portion—

(i) Of the reasonable cost of insurance allocable to this contract; and

(ii) Required or approved under this clause; and

(2) For certain liabilities (and expenses incidental to such liabilities) to third persons not compensated by insurance or otherwise without regard to and as an exception to the limitation of cost or the limitation of funds clause of this contract. These liabilities must arise out of the performance of this contract, whether or not caused by the negligence of the Contractor or of the Contractor's agents, servants, or employees, and must be represented by final judgments or settlements approved in writing by the Government. These liabilities are for—

(i) Loss of or damage to property (other than property owned, occupied, or used by the Contractor, rented to the Contractor, or in the care, custody, or control of the Contractor); or

(ii) Death or bodily injury.

(d) The Government's liability under paragraph (c) of this clause is subject to the availability of appropriated funds at the time a contingency occurs. Nothing in this contract shall be construed as implying that the Congress will, at a later date, appropriate funds sufficient to meet deficiencies.

(e) The Contractor shall not be reimbursed for liabilities (and expenses incidental to such liabilities)—

(1) For which the Contractor is otherwise responsible under the express terms of any clause specified in the Schedule or elsewhere in the contract;

(2) For which the Contractor has failed to insure or to maintain insurance as required by the Contracting Officer; or

(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in 28.312, insert the following clause:

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (MAY 1999)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for—

(i) Normal wear and tear; and

(ii) Loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death

of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

52.228-9 Cargo Insurance.

As prescribed in 28.313(a), insert the following clause:

CARGO INSURANCE (MAY 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$_____ per vehicle to cover the value of property on each vehicle and of \$_____ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to _____ [insert name of contracting agency], and policies shall include such terms and conditions as required by _____ [insert name of contracting agency]. The Contractor shall provide evidence of acceptable cargo insurance to _____ [insert name of contracting agency] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

"It is a condition of this policy that the Company shall furnish—

(1) Written notice to _____ [insert name and address of contracting agency], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to

the expiration of any current policy on file with _____ [insert name of contracting agency]."

(End of clause)

52.228-10 Vehicular and General Public Liability Insurance.

As prescribed in 28.313(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE (APR 1984)

(a) The Contractor, at the Contractor's expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for—

(1) Bodily injury of not less than \$_____ for each person and \$_____ for each occurrence; and

(2) Property damage of not less than \$_____ for each accident and \$_____ in the aggregate.

(b) The Contractor also agrees to maintain workers' compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(End of clause)

52.228-11 Pledges of Assets.

As prescribed in 28.203-6, insert the following clause:

PLEDGES OF ASSETS (FEB 1992)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

(1) Pledge of assets; and

(2) Standard Form 28, Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in MMAR 28.203-2 (except see 28.203-2(b)(2) with respect to Government securities held in book entry form) and/or;

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) Evidence of title in the form of a certificate of title prepared by a title insurance company approved by the United States Department of Justice. This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, includ-

ing the lien filed in favor of the Government as required by MMAR 28.203-3(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

52.228-12 Prospective Subcontractor Requests for Bonds.

As prescribed in 28.106-4(b), use the following clause:

PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS (OCT 1995)

In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to the Miller Act, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

52.228-13 Alternative Payment Protections.

As prescribed in 28.102-3(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JULY 2000)

(a) The Contractor shall submit one of the following payment protections:

(b) The amount of the payment protection shall be 100 percent of the contract price.

(c) The submission of the payment protection is required within _____ days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

52.228-14 Irrevocable Letter of Credit.

As prescribed in 28.204-4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (DEC 1999)

(a) "Irrevocable letter of credit" (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Miller Act, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Miller Act, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

[Issuing Financial Institution's Letterhead or
Name and Address]
Issue Date _____
Irrevocable Letter of Credit No. _____
Account party's name _____
Account party's address _____
For Solicitation No. _____ (for reference only)
To: [U.S. Government agency]
[U.S. Government agency's address]

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$ _____. This Letter of Credit is payable at [issuing financial institution's and, if any, confirming financial institution's] office at [issuing financial institution's address and, if any, confirming financial institution's address] and expires with our close of business on _____, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to

either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution, if any, otherwise state of issuing financial institution].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

[Confirming Financial Institution's Letterhead or
Name and Address]
(Date) _____
Our Letter of Credit Advice Number _____
Beneficiary: _____ [U.S. Government agency]
Issuing Financial Institution: _____
Issuing Financial Institution's LC No.: _____

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by _____ [name of issuing financial institution] for drawings of up to United States dollars _____/U.S. \$ _____ and expiring with our close of business on _____ [the expiration date], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at _____.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of _____ [state of confirming financial institution].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

[City, State]

(Date) _____
[Name and address of financial institution]

Pay to the order of _____ [Beneficiary Agency]
_____ the sum of United States \$ _____. This
draft is drawn under Irrevocable Letter of Credit No.
_____.

[Beneficiary Agency]

[By]

(End of clause)

52.228-15 Performance and Payment Bonds—Construction.

As prescribed in 28.102-3(a), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION
(JULY 2000)

(a) *Definitions.* As used in this clause—

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$100,000 or less, the successful offeror shall fur-

nish performance and payment bonds to the Contracting Officer as follows:

(1) *Performance bonds (Standard Form 25).* The penal amount of performance bonds at the time of contract award shall be 100 percent of the original contract price.

(2) *Payment Bonds (Standard Form 25-A).* The penal amount of payment bonds at the time of contract award shall be 100 percent of the original contract price.

(3) *Additional bond protection.* (i) The Government may require additional performance and payment bond protection if the contract price is increased. The increase in protection generally will equal 100 percent of the increase in contract price.

(ii) The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) *Furnishing executed bonds.* The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within the time period specified in the Bid Guarantee provision of the solicitation, or otherwise specified by the Contracting Officer, but in any event, before starting work.

(d) *Surety or other security for bonds.* The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier’s check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register* or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227.

(e) *Notice of subcontractor waiver of protection (40 U.S.C. 270b(c)).* Any waiver of the right to sue on the payment bond is void unless it is in writing, signed by the person whose right is waived, and executed after such person has first furnished labor or material for use in the performance of the contract.

(End of clause)

52.228-16 Performance and Payment Bonds—Other Than Construction.

As prescribed in 28.103-4, insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—OTHER THAN
CONSTRUCTION (JULY 2000)

(a) *Definitions.* As used in this clause—

“Original contract price” means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to _____ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within _____ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the *Federal Register*, or may be obtained from the:

U.S. Department of Treasury
Financial Management Service
Surety Bond Branch
401 14th Street, NW, 2nd Floor, West Wing
Washington, DC 20227

(End of clause)

Alternate I (July 2000). As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to _____ percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

52.229-1 State and Local Taxes.

As prescribed in 29.401-1, insert the following clause in solicitations and contracts for leased equipment, when a

fixed-price indefinite-delivery contract is contemplated, the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico, and the place or places of delivery are not known at the time of contracting:

STATE AND LOCAL TAXES (APR 1984)

Notwithstanding the terms of the Federal, State, and Local Taxes clause, the contract price excludes all State and local taxes levied on or measured by the contract or sales price of the services or completed supplies furnished under this contract. The Contractor shall state separately on its invoices taxes excluded from the contract price, and the Government agrees either to pay the amount of the taxes to the Contractor or provide evidence necessary to sustain an exemption.

(End of clause)

52.229-2 North Carolina State and Local Sales and Use Tax.

As prescribed in 29.401-2, insert the following clause in solicitations and contracts for construction to be performed in North Carolina:

NORTH CAROLINA STATE AND LOCAL SALES AND USE TAX (APR 1984)

(a) “Materials,” as used in this clause, means building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired under this contract.

(b) If this is a fixed-price contract, the contract price includes North Carolina State and local sales and use taxes to be paid on materials, notwithstanding any other provision of this contract. If this is a cost-reimbursement contract, any North Carolina State and local sales and use taxes paid by the Contractor on materials shall constitute an allowable cost under this contract.

(c) At the time specified in paragraph (d) of this section, the Contractor shall furnish the Contracting Officer certified statements setting forth the cost of the materials purchased from each vendor and the amount of North Carolina State and local sales and use taxes paid. In the event the Contractor makes several purchases from the same vendor, the certified statement shall indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the North Carolina State and local sales and use taxes paid. The statement shall also include the cost of any tangible personal property withdrawn from the Contractor's warehouse stock and the amount of North Carolina State and local sales or use tax paid on this property by the Contractor. Any local sales or use taxes included in the Contractor's statements must be shown separately from the State sales or use taxes. The Contractor shall furnish any additional information the Commissioner of Revenue of the State of North Carolina may require to substantiate a refund claim for sales or use taxes. The Con-

tractor shall also obtain and furnish to the Contracting Officer similar certified statements by its subcontractors.

(d) If this contract is completed before the next October 1, the certified statements to be furnished pursuant to paragraph (c) of this clause shall be submitted within 60 days after completion. If this contract is not completed before the next October 1, the certified statements shall be submitted on or before November 30 of each year and shall cover taxes paid during the 12-month period that ended the preceding September 30.

(e) The certified statements to be furnished pursuant to paragraph (c) of this clause shall be in the following form:

I hereby certify that during the period _____ to _____ [insert dates], _____ [insert name of Contractor or subcontractor] paid North Carolina State and local sales and use taxes aggregating \$ _____ (State) and \$ _____ (local), with respect to building materials, supplies, fixtures, and equipment that have become a part of or annexed to a building or structure erected, altered, or repaired by _____ [insert name of Contractor or subcontractor] for the United States of America, and that the vendors from whom the property was purchased, the dates and numbers of the invoices covering the purchases, the total amount of the invoices of each vendor, the North Carolina State and local sales and use taxes paid on the property (shown separately), and the cost of property withdrawn from warehouse stock and North Carolina State and local sales or use taxes paid on this property are as set forth in the attachments.

(End of clause)

Alternate I (Apr 1984). If the requirement is for vessel repair to be performed in North Carolina, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) "Materials," as used in this clause, means materials, supplies, fixtures, and equipment that become a part of or are annexed to any vessel altered or repaired under this contract.

52.229-3 Federal, State, and Local Taxes.

As prescribed in 29.401-3, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

(a) "Contract date," as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, 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 this contract.

"After-imposed Federal tax," as used in this clause, 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 this 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," as used in this clause, 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 this 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.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) 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.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) 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.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) 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.

(h) 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.

(End of clause)

52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).

As prescribed in 29.401-4, insert the following clause:

FEDERAL, STATE, AND LOCAL TAXES (NONCOMPETITIVE CONTRACT (JAN 1991))

(a) "Contract date," as used in this clause, means the effective date of this contract and, for any modification to this contract, the effective date of the modification.

"All applicable Federal, State, and local taxes and duties," as used in this clause, 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 this contract.

“After-imposed tax,” as used in this clause, means any new or increased Federal, State, or local tax or duty, or tax that was excluded on the contract date but whose exclusion was later revoked or amount of exemption reduced during the contract period, other than an excepted tax, on the transactions or property covered by this 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.

“After-relieved tax,” as used in this clause, means any amount of Federal, State, or local tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this 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.

“Excepted tax,” as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor’s possession of, interest in, or use of property, title to which is in the Government.

(b) Unless otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed tax, or of any tax or duty specifically excluded from the contract price by a term or condition of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(d) The contract price shall be decreased by the amount of any after-relieved tax. The Government shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government for such taxes. The Government shall be entitled to repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(e) The contract price shall be decreased by the amount of any Federal, State, or local tax, other than an excepted tax, that was included in the contract price and 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.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to Federal, State, and local taxes and duties 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. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.

(h) The Government shall furnish evidence appropriate to establish exemption from any Federal, State, or local tax when—

(1) The Contractor requests such exemption and states in writing that it applies to a tax excluded from the contract price; and

(2) A reasonable basis exists to sustain the exemption.

(End of clause)

52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.

As prescribed in 29.401-5, insert the following clause in solicitations and contracts that include the clause at 52.229-3, Federal, State, and Local Taxes, or 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract):

TAXES—CONTRACTS PERFORMED IN U.S. POSSESSIONS OR PUERTO RICO (APR 1984)

The term “local taxes,” as used in the Federal, State, and local taxes clause of this contract, includes taxes imposed by a possession of the United States or by Puerto Rico.

(End of clause)

52.229-6 Taxes—Foreign Fixed-Price Contracts.

As prescribed in 29.402-1(a), insert the following clause:

TAXES—FOREIGN FIXED-PRICE CONTRACTS (JAN 1991)

(a) To the extent that this contract provides for furnishing supplies or performing services outside the United States, its possessions, and Puerto Rico, this clause applies in lieu of any Federal, State, and local taxes clause of the contract.

(b) “Contract date,” as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

“Country concerned,” as used in this clause, means any country, other than the United States, its possessions, and Puerto Rico, in which expenditures under this contract are made.

“Tax” and “taxes,” as used in this clause, include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.

“All applicable taxes and duties,” as used in this clause, 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 this contract, pursuant to written ruling or regulation in effect on the contract date.

“After-imposed tax,” as used in this clause, means any new or increased 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, other than excepted tax, on the transactions or property covered by this 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.

“After-relieved tax,” as used in this clause, means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“Excepted tax,” as used in this clause, means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this contract, or any tax assessed on the Contractor’s possession of, interest in, or use of property, title to which is in the U.S. Government.

(c) Unless otherwise provided in this contract, the contract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(d) The contract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the contract price by a provision of this contract that the Contractor is required to pay or bear, including any interest or penalty, if the Contractor states in writing that the contract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer or to comply with the provisions of paragraph (i) of this clause.

(e) The contract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States shall be entitled to interest received by the Contractor incident to a refund of taxes to the extent that such interest was earned after the Contractor was paid by the Government of the United States for such taxes. The Government of the United States shall be entitled to

repayment of any penalty refunded to the Contractor to the extent that the penalty was paid by the Government.

(f) The contract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the contract and 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 or to comply with the provisions of paragraph (i) of this clause.

(g) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(h) If the Contractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the contract price or was the basis of an increase in the contract price, the amount of the reduction shall be paid or credited to the Government of the United States as the Contracting Officer directs.

(i) The Contractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, the Contractor, any subcontractor, or the transactions or property covered by this contract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

(j) The Contractor shall promptly notify the Contracting Officer of all matters relating to taxes or duties 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. The contract price shall be equitably adjusted to cover the costs of action taken by the Contractor at the direction of the Contracting Officer, including any interest, penalty, and reasonable attorneys’ fees.

(End of clause)

52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.

As prescribed in 29.402-1(b), insert the following clause:

TAXES—FIXED-PRICE CONTRACTS WITH FOREIGN GOVERNMENTS (JAN 1991)

(a) “Contract date,” as used in this clause, means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

(b) The contract price, including the prices in any subcontracts under this contract, does not include any tax or duty that the Government of the United States and the Government of _____ [*insert name of the foreign government*] have agreed shall not apply to expenditures made by the United States in _____ [*insert name of country*], or any tax or duty not applicable to this contract or any subcontracts under this contract,

pursuant to the laws of _____ [*insert name of country*]. If any such tax or duty has been included in the contract price, through error or otherwise, the contract price shall be correspondingly reduced.

(c) If, after the contract date, the Government of the United States and the Government of _____ [*insert name of the foreign government*] agree that any tax or duty included in the contract price shall not apply to expenditures by the United States in _____ [*insert name of country*], the contract price shall be reduced accordingly.

(d) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(End of clause)

52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.

As prescribed in 29.402-2(a), insert the following clause:

TAXES—FOREIGN COST-REIMBURSEMENT CONTRACTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ [*insert name of the foreign government*], or from which the Contractor or any subcontractor under this contract is exempt under the laws of _____ [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If the Contractor or subcontractor under this contract obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under this contract, the amount of the reduction shall be paid or credited at the time of such offset to the Government of the United States as the Contracting Officer directs.

(End of clause)

52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.

As prescribed in 29.402-2(b), insert the following clause:

TAXES—COST-REIMBURSEMENT CONTRACTS WITH FOREIGN GOVERNMENTS (MAR 1990)

(a) Any tax or duty from which the United States Government is exempt by agreement with the Government of _____ [*insert name of the foreign government*], or from which any subcontractor under this contract is exempt under the laws of _____ [*insert name of country*], shall not constitute an allowable cost under this contract.

(b) If any subcontractor obtains a foreign tax credit that reduces its Federal income tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that was reimbursed under

this contract, the amount of the reduction shall be paid (not credited to the contract) to the Treasurer of the United States at the time the Federal income tax return is filed.

(End of clause)

52.229-10 [Reserved]

52.230-1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201-3, insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUNE 2000)

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

CAUTION: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a

part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: _____
Name and Address of Cognizant ACO or Federal Official
Where Filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

[] (2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: _____
Name and Address of Cognizant ACO or Federal Official
Where Filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

[] (3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

[] (4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

yes no

(End of provision)

Alternate I (Apr 1996). As prescribed in 30.201-3(b), add the following paragraph (c)(5) to Part I of the basic provision:

(5) *Certificate of Disclosure Statement Due Date by Educational Institution.* If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

(i) A Disclosure Statement Filing Due Date of _____ has been established with the cognizant Federal agency.

(ii) The Disclosure Statement will be submitted within the 6-month period ending _____ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official
Where Disclosure Statement is to be Filed: _____

52.230-2 Cost Accounting Standards.

As prescribed in 30.201-4(a), insert the following clause:

COST ACCOUNTING STANDARDS (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS)

which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data,

on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$500,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201-4(b)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1998)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR part 9904.

(2) *(CAS-covered Contracts Only)* If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjust-

ment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

52.230-4 Consistency in Cost Accounting Practices.

As prescribed in 30.201-4(c), insert the following clause:

CONSISTENCY IN COST ACCOUNTING PRACTICES (AUG 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS-1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of

the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

52.230-5 Cost Accounting Standards—Educational Institution.

As prescribed in 30.201-4(e), insert the following clause:

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (APR 1998)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS

rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

52.230-6 Administration of Cost Accounting Standards.

As prescribed in 30.201-4(d)(1), insert the following clause:

ADMINISTRATION OF COST ACCOUNTING STANDARDS (NOV 1999)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (g) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (*i.e.*, firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (*i.e.*, Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the clause at MMAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at MMAR 52.230-5, Cost Accounting Standards—Educational Institution; within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clauses at MMAR 52.230-2, Cost Accounting Standards, and MMAR 52.230-5, Cost Accounting Standards—Educational Institution; or with paragraph (a)(3) of the clause at MMAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) at MMAR 52.230-2, Cost Accounting Standards, and MMAR 52.230-5, Cost Accounting Standards—Educational Institution; or by paragraph (a)(4) at MMAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO, or cognizant Federal agency official, determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with paragraph (a)(3) and subdivision (a)(4)(i) of the clause at MMAR 52.230-2, Cost Accounting Standards; or paragraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at MMAR 52.230-5, Cost Accounting Standards—Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards—Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (iii) of the clauses at MMAR 52.230-2, Cost Accounting Standards, and MMAR 52.230-5, Cost Accounting Standards—Educational Institution; or with paragraph (a)(3) of the clause at MMAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at MMAR 52.230-2, Cost Accounting Standards, MMAR 52.230-5, Cost Accounting Standards—Educational Institution, and MMAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by paragraph (a)(5) of the clauses at MMAR 52.230-2, Cost Accounting Standards, and MMAR 52.230-5, Cost Accounting Standards—Educational Institution; or by paragraph (a)(4) of the clause at MMAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the clauses at MMAR

52.230-2 and 52.230-5; or with paragraphs (a)(3) or (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause at MMAR 52.230-3.

(e) For all subcontracts subject to the clauses at MMAR 52.230-2, 52.230-3, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contract price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the clauses at MMAR 52.230-2 or 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

52.231 [Reserved]

52.232-1 Payments.

As prescribed in 32.111(a)(1), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

52.232-2 Payments under Fixed-Price Research and Development Contracts.

As prescribed in 32.111(a)(2), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

52.232-3 Payments under Personal Services Contracts.

As prescribed in 32.111(a)(3), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by

the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract. The Government shall also pay the Contractor—

- (a) A per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in appropriate Travel Orders; and
- (b) Any other transportation expenses if provided for in the Schedule.

(End of clause)

52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.

As prescribed in 32.111(a)(4), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services: Payments under Transportation Contracts and Transportation-Related Services Contracts (Apr 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)

52.232-5 Payments under Fixed-Price Construction Contracts.

As prescribed in 32.111(a)(5), insert the following clause:

PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (SEPT 2002)

- (a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.
- (b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

- (i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.
- (ii) A listing of the amount included for work performed by each subcontractor under the contract.
- (iii) A listing of the total amount of each subcontract under the contract.
- (iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

(Name)

(Title)

(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also

be required of the assignee if the Contractor's claim to amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in MMAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

52.232-6 Payment under Communication Service Contracts with Common Carriers.

As prescribed in 32.111(a)(6), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled "Rates, Charges and Services."

(End of clause)

52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.

As prescribed in 32.111(b), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (DEC 2002)

The Government will pay the Contractor as follows upon the submission of invoices or vouchers approved by the Contracting Officer:

(a) *Hourly rate.* (1) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed. The rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis. Vouchers may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or designee. The Contractor shall substantiate vouchers by evidence of actual payment and by individual daily job timecards, or other substantiation approved by the Contracting Officer.

Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of (e) of this section, pay the voucher as approved by the Contracting Officer.

(2) Unless otherwise prescribed in the Schedule, the Contracting Officer shall withhold 5 percent of the amounts due under this paragraph (a), but the total amount withheld shall not exceed \$50,000. The amounts withheld shall be retained until the execution and delivery of a release by the Contractor as provided in paragraph (f) of this section.

(3) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials and subcontracts.* (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Materials Management Acquisition Regulation (MMAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the MMAR.

(3) The Government will reimburse the Contractor for supplies and services purchased directly for the contract when the Contractor—

- (i) Has made payments of cash, checks, or other forms of payment for these purchased supplies or services; or
- (ii) Will make these payments determined due—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(4)(i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for supplies

and services purchased directly for the contract when the Contractor has made or will make payments determined due of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(c) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(d) *Ceiling price.* The Government shall not be obligated to pay the Contractor any amount in excess of the ceiling price

in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer shall have notified the Contractor in writing that the ceiling price has been increased and shall have specified in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(e) *Audit.* At any time before final payment under this contract the Contracting Officer may request audit of the invoices or vouchers and substantiating material. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices or vouchers, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher or invoice designated by the Contractor as the "completion voucher" or "completion invoice" and substantiating material, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of (f) and (g) of this section), the Government shall promptly pay any balance due the Contractor. The completion invoice or voucher, and substantiating material, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(f) *Assignment.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier.

(3) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(g) *Refunds.* The Contractor agrees that any refunds, rebates, or credits (including any related interest) accruing to or received by the Contractor or any assignee, that arise under the materials portion of this contract and for which the Contractor has received reimbursement, shall be paid by the Contractor to the Government. The Contractor and each assignee, under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, an assignment to the Government of such refunds, rebates, or credits (including any interest) in form and substance satisfactory to the Contracting Officer.

(h) *Interim payments.* (1) Interim payments made prior to the final payment under the contract are contract financing payments.

(2) The designated payment office will make interim payments for contract financing on the _____ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(End of clause)

Alternate I (Mar 2000). If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, and the price is under the limitations prescribed in 16.601(b)(3), add the following paragraph (6) to paragraph (b) of the basic clause:

(b)(6) If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

Alternate II (Feb 2002). If a labor-hour contract is contemplated, and if no specific reimbursement for materials furnished is intended, the Contracting Officer may add the following paragraph (i) to the basic clause:

(i) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.232-8 Discounts for Prompt Payment.

As prescribed in 32.111(c)(1), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to be conducted, payment may be made on the following business day.

(End of clause)

52.232-9 Limitation on Withholding of Payments.

As prescribed in 32.111(c)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

(a) Withholdings pursuant to any clause relating to wages or hours of employees;

(b) Withholdings not specifically provided for by this contract;

(c) The recovery of overpayments; and

(d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in 32.111(d)(1), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (AUG 1987)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract. The estimates shall be prepared by the Contractor and accompanied by any supporting data required by the Contracting Officer.

(b) Upon approval of the estimate by the Contracting Officer, payment upon properly executed vouchers shall be made to the Contractor, as soon as practicable, of 90 percent of the approved amount, less all previous payments; *provided*, that payment may be made in full during any months in which the Contracting Officer determines that performance has been satisfactory. Also, whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer may release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and acceptance by the Contracting Officer of the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including retained percentages relating to this portion of the work. Upon satisfactory completion and final acceptance of the construction work, the Contractor shall be paid any unpaid balance of money due under this contract.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in MMAR Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as

contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(End of clause)

52.232-11 Extras.

As prescribed in 32.111(d)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

52.232-12 Advance Payments.

As prescribed in 32.412(a), insert the following clause:

ADVANCE PAYMENTS (MAY 2001)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by the administering office, _____ [*insert the name of the office designated under agency procedures*], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed \$_____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Special account.* Until (1) the Contractor has liquidated all advance payments made under the contract and related interest charges and (2) the administering office has approved in writing the release of any funds due and payable to the Contractor, all advance payments and other payments under this contract shall be made by check payable to the Contractor marked for deposit only in the Contractor's special account with the _____ [*insert the name of the financial institution*]. None of the funds in the special account shall be mingled with other funds of the Contractor. Withdrawals from the special account may be made only by check of the Contractor countersigned by the Contracting Officer or a Government countersigning agent designated in writing by the Contracting Officer.

(c) *Use of funds.* The Contractor may withdraw funds from the special account only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor,

and indirect costs. Other withdrawals require approval in writing by the administering office. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(d) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause. If the Contractor fails to repay the amount requested by the administering office, all or any part of the unliquidated advance payments may be withdrawn from the special account by check signed by only the countersigning agent and applied to reduction of the unliquidated advance payments under this contract.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of \$_____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed \$_____ [*insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph*]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in paragraph (f)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the higher of (i) the published prime rate of the financial institution (depository) in which the special account is established or (ii) the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App. 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rates.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(g) *Financial institution agreement.* Before an advance payment is made under this contract, the Contractor shall transmit to the administering office, in the form prescribed by the administering office, an agreement in triplicate from the financial institution in which the special account is established, clearly setting forth the special character of the account and the responsibilities of the financial institution under the account. The Contractor shall select a financial institution that is a member bank of the Federal Reserve System, an "insured" bank within the meaning of the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration.

(h) *Lien on special bank account.* The Government shall have a lien upon any balance in the special account paramount to all other liens. The Government lien shall secure the repayment of any advance payments made under this contract and any related interest charges.

(i) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things

covered by this contract and on material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the Contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

(i) The termination inventory is sold or retained; and

(ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(j) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

(i) Maintain this insurance;

(ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (i) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

(k) *Default.*(1) If any of the following events occurs, the Government may, by written notice to the Contractor, withhold further withdrawals from the special account and further payments on this contract:

(i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The service of any writ of attachment, levy of execution, or commencement of garnishment proceedings concerning the special account.

(v) The commission of an act of bankruptcy.

(2) If any of the events described in paragraph (k)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Withdraw by checks payable to the Treasurer of the United States, signed only by the countersigning agency, all or any part of the balance in the special account and apply the amounts to reduce outstanding advance payments and any other claims of the Government against the Contractor.

(ii) Charge interest, in the manner prescribed in paragraph (f) of this clause, on outstanding advance payments during the period of any event described in paragraph (k)(1) of this clause.

(iii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iv) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in paragraphs (k)(1) and (2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(l) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(m) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements together with a report on the operation of the special account in the form prescribed by the administering office; and (2) if requested, other information concerning the operation of the Contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish additional security satisfactory to the administering office, to the extent that the security is available.

(o) *Representations.* The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(p) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office; accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government; or employ any person at a rate of compensation over \$_____ a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding \$_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than \$_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

(End of clause)

Alternate I (Apr 1984). If the agency desires to waive the countersignature requirement because of the Contractor's financial strength, good performance record, and favorable experience concerning cost disallowances, add the following sentence, if appropriate, to paragraph (b) of the basic clause:

However, for this contract, countersignature on behalf of the Government will not be required unless it is determined necessary by the administering office.

Alternate II (May 2001). If used in a cost-reimbursement contract, substitute the following paragraphs (c) and (e), and paragraphs (f)(1) and (f)(2) for paragraphs (c) and (e) and paragraphs (f)(1) and (2) of the basic clause:

(c) *Use of funds.* The Contractor shall withdraw funds from the special account only to pay for allowable costs as prescribed by the _____ clause of this contract. Payment for any other types of expenses shall be approved in writing by the administering office.

(e) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments equal the total estimated cost of \$_____ (not including fixed-fee, if any) for the work under this contract, the Government shall withhold further payments to the Contractor. Upon completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and interest charges payable. The Contractor shall pay any deficiency to the Government upon demand. For purposes of this paragraph, the estimated cost shall be considered to be the stated estimated cost, less any subsequent reductions of the estimated cost, plus any increases in the estimated costs that do not, in the aggregate, exceed \$_____ *[Insert an amount not higher than 10 percent of the stated estimated cost inserted in this paragraph]*. The estimated cost shall include, without limitation, any reimbursable cost (as estimated by the Contracting Officer) incident to a termination for the convenience of the Government. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(f) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate specified in paragraph (f)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge, the following shall be observed:

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check.

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer.

(iii) Liquidations by deductions from payments to the Contractor shall be considered as decreasing the unliquidated balance as of the dates on which the Contractor presents to the Contracting Officer full and accurate data for the preparation of each voucher. Credits resulting from these deductions shall be made upon the approval of the reimbursement vouchers by the Disbursing Officer, based upon the Contracting Officer's certification of the applicable dates.

(2) Interest charges resulting from the monthly computation shall be deducted from any payments on account of the fixed-fee due to the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments of the contract price or fixed-fee. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon (i) satisfactory completion or (ii) termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors for experimental, developmental, or research work.

Alternate III (Apr 1984). If the agency considers a more rapid liquidation appropriate, add the following sentence as the first sentence of paragraph (e) of the basic clause with the appropriate percentage specified:

To liquidate the principal amount of any advance payment made to the Contractor, there shall be deductions of _____ percent from all payments made by the Government under the contracts involved.

Alternate IV (Apr 1984). If the agency provides advance payments under the contract at no interest to the prime contractor, add the following sentences as the beginning sentences of paragraph (f) of the clause:

No interest shall be charged to the prime Contractor for advance payments except for interest charged during a period of default. The terms of this paragraph concerning interest charges for advance payments shall not apply to the prime Contractor.

Alternate V (May 2001). If the requirement for a special account is eliminated in accordance with 32.409-3(e) or (g), insert the clause set forth below instead of the basic clause.

If this Alternate is used in combination with *Alternate II*, disregard the instructions concerning paragraph (c), Use of funds, in *Alternate II*; substitute paragraph (e), Maximum payment, in *Alternate II* for paragraph (d) below; and substitute paragraph (f), Interest, in *Alternate II* for paragraph (e) below and change the reference to paragraph (f)(3) in the first sentence of paragraph (f) of *Alternate II* to (e)(3).

If this Alternate is used in combination with *Alternate III*, insert the additional sentence set forth in *Alternate III* as the first sentence of paragraph (d) of this Alternate.

If this Alternate is used in combination with *Alternate IV*, insert the additional sentences set forth in *Alternate IV* as the beginning sentences of paragraph (e) of this Alternate.

ADVANCE PAYMENTS WITHOUT SPECIAL ACCOUNT (MAY 2001)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the contractor, and approval by the administering office, _____ [insert the name of the office designated under agency procedures], or (2) under a letter of credit. The amount of the invoice or voucher submitted plus all advance payments previously approved shall not exceed \$_____. If a letter of credit is used, the Contractor shall withdraw cash only when needed for disbursements acceptable under this contract and report cash disbursements and balances as required by the administering office. The Contractor shall apply terms similar to this clause to any advance payments to subcontractors.

(b) *Use of funds.* The Contractor may use advance payment funds only to pay for properly allocable, allowable, and reasonable costs for direct materials, direct labor, and indirect costs. Determinations of whether costs are properly allocable, allowable, and reasonable shall be in accordance with generally accepted accounting principles, subject to any applicable subparts of Part 31 of the Federal Acquisition Regulation.

(c) *Repayment to the Government.* At any time, the Contractor may repay all or any part of the funds advanced by the Government. Whenever requested in writing to do so by the administering office, the Contractor shall repay to the Government any part of unliquidated advance payments considered by the administering office to exceed the Contractor's current requirements or the amount specified in paragraph (a) of this clause.

(d) *Maximum payment.* When the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed ____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this

paragraph, the contract price shall be considered to be the stated contract price of \$____, less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed \$____ [insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(e) *Interest.* (1) The Contractor shall pay interest to the Government on the daily unliquidated advance payments at the daily rate in paragraph (e)(3) of this clause. Interest shall be computed at the end of each calendar month for the actual number of days involved. For the purpose of computing the interest charge—

(i) Advance payments shall be considered as increasing the unliquidated balance as of the date of the advance payment check;

(ii) Repayments by Contractor check shall be considered as decreasing the unliquidated balance as of the date on which the check is received by the Government authority designated by the Contracting Officer; and

(iii) Liquidations by deductions from Government payments to the Contractor shall be considered as decreasing the unliquidated balance as of the date of the check for the reduced payment.

(2) Interest charges resulting from the monthly computation shall be deducted from payments, other than advance payments, due the Contractor. If the accrued interest exceeds the payment due, any excess interest shall be carried forward and deducted from subsequent payments. Interest carried forward shall not be compounded. Interest on advance payments shall cease to accrue upon satisfactory completion or termination of the contract for the convenience of the Government. The Contractor shall charge interest on advance payments to subcontractors in the manner described above and credit the interest to the Government. Interest need not be charged on advance payments to nonprofit educational or research subcontractors, for experimental, developmental, or research work.

(3) If interest is required under the contract, the Contracting Officer shall determine a daily interest rate based on the rate established by the Secretary of the Treasury under Pub. L. 92-41 (50 U.S.C. App., 1215(b)(2)). The Contracting Officer shall revise the daily interest rate during the contract period in keeping with any changes in the cited interest rate.

(4) If the full amount of interest charged under this paragraph has not been paid by deduction or otherwise upon completion or termination of this contract, the Contractor shall pay the remaining interest to the Government on demand.

(f) *Lien on property under contract.* (1) All advance payments under this contract, together with interest charges, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, on the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract,

except to the extent that the Government by virtue of any other terms of this contract, or otherwise, shall have valid title to the supplies, materials, or other property as against other creditors of the Contractor.

(2) The Contractor shall identify, by marking or segregation, all property that is subject to a lien in favor of the Government by virtue of any terms of this contract in such a way as to indicate that it is subject to a lien and that it has been acquired for or allocated to performing this contract. If, for any reason, the supplies, materials, or other property are not identified by marking or segregation, the Government shall be considered to have a lien to the extent of the Government's interest under this contract on any mass of property with which the supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over the property on its books and records.

(3) If, at any time during the progress of the work on the contract, it becomes necessary to deliver to a third person any items or materials on which the Government has a lien, the Contractor shall notify the third person of the lien and shall obtain from the third person a receipt in duplicate acknowledging the existence of the lien. The Contractor shall provide a copy of each receipt to the Contracting Officer.

(4) If, under the termination clause, the Contracting Officer authorizes the contractor to sell or retain termination inventory, the approval shall constitute a release of the Government's lien to the extent that—

- (i) The termination inventory is sold or retained; and
- (ii) The sale proceeds or retention credits are applied to reduce any outstanding advance payments.

(g) *Insurance.* (1) The Contractor shall maintain with responsible insurance carriers—

(i) Insurance on plant and equipment against fire and other hazards, to the extent that similar properties are usually insured by others operating plants and properties of similar character in the same general locality;

(ii) Adequate insurance against liability on account of damage to persons or property; and

(iii) Adequate insurance under all applicable workers' compensation laws.

(2) Until work under this contract has been completed and all advance payments made under the contract have been liquidated, the Contractor shall—

- (i) Maintain this insurance;
- (ii) Maintain adequate insurance on any materials, parts, assemblies, subassemblies, supplies, equipment, and other property acquired for or allocable to this contract and subject to the Government lien under paragraph (f) of this clause; and

(iii) Furnish any evidence with respect to its insurance that the administering office may require.

(h) *Default.* (1) If any of the following events occur, the Government may, by written notice to the Contractor, withhold further payments on this contract:

- (i) Termination of this contract for a fault of the Contractor.

(ii) A finding by the administering office that the Contractor has failed to—

(A) Observe any of the conditions of the advance payment terms;

(B) Comply with any material term of this contract;

(C) Make progress or maintain a financial condition adequate for performance of this contract;

(D) Limit inventory allocated to this contract to reasonable requirements; or

(E) Avoid delinquency in payment of taxes or of the costs of performing this contract in the ordinary course of business.

(iii) The appointment of a trustee, receiver, or liquidator for all or a substantial part of the Contractor's property, or the institution of proceedings by or against the Contractor for bankruptcy, reorganization, arrangement, or liquidation.

(iv) The commission of an act of bankruptcy.

(2) If any of the events described in paragraph (h)(1) of this clause continue for 30 days after the written notice to the Contractor, the Government may take any of the following additional actions:

(i) Charge interest, in the manner prescribed in paragraph (e) of this clause, on outstanding advance payments during the period of any event described in paragraph (h)(1) of this clause.

(ii) Demand immediate repayment by the Contractor of the unliquidated balance of advance payments.

(iii) Take possession of and, with or without advertisement, sell at public or private sale all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to the sale, apply the net proceeds of the sale to reduce the unliquidated balance of advance payments or other Government claims against the Contractor.

(3) The Government may take any of the actions described in paragraphs (h)(1) and (h)(2) of this clause it considers appropriate at its discretion and without limiting any other rights of the Government.

(i) *Prohibition against assignment.* Notwithstanding any other terms of this contract, the Contractor shall not assign this contract, any interest therein, or any claim under the contract to any party.

(j) *Information and access to records.* The Contractor shall furnish to the administering office (1) monthly or at other intervals as required, signed or certified balance sheets and profit and loss statements, and, (2) if requested, other information concerning the operation of the contractor's business. The Contractor shall provide the authorized Government representatives proper facilities for inspection of the Contractor's books, records, and accounts.

(k) *Other security.* The terms of this contract are considered to provide adequate security to the Government for advance payments; however, if the administering office considers the security inadequate, the Contractor shall furnish addi-

tional security satisfactory to the administering office, to the extent that the security is available.

(l) *Representations.* The Contractor represents the following:

(1) The balance sheet, the profit and loss statement, and any other supporting financial statements furnished to the administering office fairly reflect the financial condition of the Contractor at the date shown or the period covered, and there has been no subsequent materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the financial statements.

(3) The Contractor has disclosed all contingent liabilities, except for liability resulting from the renegotiation of defense production contracts, in the financial statements furnished to the administering office.

(4) None of the terms in this clause conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments, and has taken all necessary action to authorize the acceptance under the terms of this contract.

(6) The assets of the Contractor are not subject to any lien or encumbrance of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor. There is no current assignment of claims under any contract affected by these advance payment provisions.

(7) All information furnished by the Contractor to the administering office in connection with each request for advance payments is true and correct.

(8) These representations shall be continuing and shall be considered to have been repeated by the submission of each invoice for advance payments.

(m) *Covenants.* To the extent the Government considers it necessary while any advance payments made under this contract remain outstanding, the Contractor, without the prior written consent of the administering office, shall not—

(1) Mortgage, pledge, or otherwise encumber or allow to be encumbered, any of the assets of the Contractor now owned or subsequently acquired, or permit any preexisting mortgages, liens, or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to performing this contract and with respect to which the Government has a lien under this contract;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes, or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any of its stock, except as required by sinking fund or redemption arrangements

reported to the administering office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or Governmental authority, except direct obligations of the United States;

(6) Make any advance or loan or incur any liability as guarantor, surety, or accommodation endorser for any party;

(7) Permit a writ of attachment or any similar process to be issued against its property without getting a release or bonding the property within 30 days after the entry of the writ of attachment or other process;

(8) Pay any remuneration in any form to its directors, officers, or key employees higher than rates provided in existing agreements of which notice has been given to the administering office, accrue excess remuneration without first obtaining an agreement subordinating it to all claims of the Government, or employ any person at a rate of compensation over \$_____ a year;

(9) Change substantially the management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of business, or engage in any transaction outside the ordinary course of the Contractor's business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation or a credit union insured by the National Credit Union Administration;

(12) Create or incur indebtedness for advances, other than advances to be made under the terms of this contract, or for borrowings;

(13) Make or covenant for capital expenditures exceeding \$_____ in total;

(14) Permit its net current assets, computed in accordance with generally accepted accounting principles, to become less than \$_____; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent provided in this contract:

[List the pertinent obligations]

52.232-13 Notice of Progress Payments.

As prescribed in 32.502-3(a), insert the following provision in invitations for bids and requests for proposals that include a Progress Payments clause:

NOTICE OF PROGRESS PAYMENTS (APR 1984)

The need for customary progress payments conforming to the regulations in Subpart 32.5 of the Materials Management Acquisition Regulation (MMAR) will not be considered as a handicap or adverse factor in the award of the contract. The Progress Payments clause included in this solicitation will be

included in any resulting contract, modified or altered if necessary in accordance with subsection 52.232-16 and its Alternate I of the MMAR. Even though the clause is included in the contract, the clause shall be inoperative during any time the contractor's accounting system and controls are determined by the Government to be inadequate for segregation and accumulation of contract costs.

(End of provision)

52.232-14 [Reserved]

52.232-15 Progress Payments Not Included.

As prescribed in 32.502-3(c), insert the following provision in invitations for bids if the solicitation will not contain one of the provisions prescribed in 32.502-3(a) and (b):

PROGRESS PAYMENTS NOT INCLUDED (APR 1984)

A progress payments clause is not included in this solicitation, and will not be added to the resulting contract at the time of award. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

(End of provision)

52.232-16 Progress Payments.

As prescribed in 32.502-4(a), insert the following clause:

PROGRESS PAYMENTS (DEC 2002)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of \$2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under MMAR 31.205-10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that are determined due and will be paid to subcontractors—

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily within 30 days of the submission of the Contractor's payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

(i) Costs that are not reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices.

(ii) Costs incurred by subcontractors or suppliers.

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—

(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and

(B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) The amount of unliquidated progress payments may exceed neither (i) the progress payments made against incomplete work (including allowable unliquidated progress payments to subcontractors) nor (ii) the value, for progress payment purposes, of the incomplete work. Incomplete work shall be considered to be the supplies and services required by this contract, for which delivery and invoicing by the Contractor and acceptance by the Government are incomplete.

(6) The total amount of progress payments shall not exceed 80 percent of the total contract price.

(7) If a progress payment or the unliquidated progress payments exceed the amounts permitted by paragraphs (a)(4) or (a)(5) of this clause, the Contractor shall repay the amount of such excess to the Government on demand.

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than \$2,500. The Contracting Officer may make exceptions.

(b) *Liquidation.* Except as provided in the Termination for Convenience of the Government clause, all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress payments, the unliquidated progress payments, or 80 percent of the amount invoiced, whichever is less. The Contractor shall repay to the Government any amounts required by a retroactive price reduction, after computing liquidations and pay-

ments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. The Government reserves the right to unilaterally change from the ordinary liquidation rate to an alternate rate when deemed appropriate for proper contract financing.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, increase the rate of liquidation, or take a combination of these actions, after finding on substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (f) and (g) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

- (i) Failure to make progress; or
- (ii) Unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(6) The Contractor is realizing less profit than that reflected in the establishment of any alternate liquidation rate in paragraph (b) of this clause, and that rate is less than the progress payment rate stated in paragraph (a)(1) of this clause.

(d) *Title.* (1) Title to the property described in this paragraph (d) shall vest in the Government. Vestiture shall be immediately upon the date of this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the below-described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices.

- (i) Parts, materials, inventories, and work in process;
- (ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;
- (iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (d)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract; *e.g.*, the termination or special tooling clauses, shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract without requesting the Contracting Officer's approval, but the proceeds shall be credited against the costs of performance.

(5) To acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. The Contractor shall (i) exclude the allocable costs of the property from the costs of contract performance, and (ii) repay to the Government any amount of unliquidated progress payments allocable to the property. Repayment may be by cash or credit memorandum.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all progress payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

- (i) Delivered to, and accepted by, the Government under this contract; or
- (ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(e) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. The Contractor shall repay the Government an amount equal to the unliquidated progress payments that are based on costs allocable to property that is damaged, lost, stolen, or destroyed.

(f) *Control of costs and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports and access to records.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information reasonably requested by the Contracting Officer for the administration of this clause. Also, the Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's books, records, and accounts.

(h) *Special terms regarding default.* If this contract is terminated under the Default clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the

Default clause. The Government shall be liable for no payment except as provided by the Default clause.

(i) *Reservations of rights.* (1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to—

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of MMAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are substantially similar to the Performance-Based Payments clause at MMAR 52.232-32 and meet the criteria for, and definition of, performance-based payments in MMAR Part 32;

(ii) Are in conformance with the requirements of MMAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with MMAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in MMAR Parts 2 and 12;

(ii) Are in conformance with the requirements of MMAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in MMAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in Subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the _____ [*Contracting Officer insert date as prescribed by agency head; if not prescribed, insert “30th”*] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(End of clause)

Alternate II (Feb 2002). If the contract is a letter contract, add paragraphs (m) and (n). The amount specified in paragraph (n) must not exceed 80 percent applied to the maximum liability of the Government under the letter contract. Separate limits may be specified for separate parts of the work.

(m) Progress payments made under this letter contract shall, unless previously liquidated under paragraph (b) of this clause, be liquidated under the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (m)(1) and (m)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(n) The amount of unliquidated progress payments shall not exceed _____ [*Contracting Officer specify dollar amount*].

Alternate III (Feb 2002). As prescribed in 32.502-4(d), add the following paragraph (m) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (o):

(m) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

52.232-17 Interest.

As prescribed in 32.617(a) and (b), insert the following clause:

INTEREST (JUNE 1996)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.

(3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Materials Management Acquisition Regulation in effect on the date of this contract.

(End of clause)

52.232-18 Availability of Funds.

As prescribed in 32.705-1(a), insert the following clause:

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232-19 Availability of Funds for the Next Fiscal Year.

As prescribed in 32.705-1(b), insert the following clause in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract (a) is funded by annual appropriations and (b) is to extend beyond the initial fiscal year (see 32.703-2(b)):

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR (APR 1984)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of

availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

52.232-20 Limitation of Cost.

As prescribed in 32.705-2(a), insert the following clause in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, except those for consolidated facilities, facilities acquisition, or facilities use, whether or not the contract provides for payment of a fee. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF COST (APR 1984)

(a) The parties estimate that performance of this contract, exclusive of any fee, will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs the Contractor expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of the estimated cost specified in the Schedule; or

(2) The total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of (i) the estimated cost specified in the Schedule or, (ii) if this is a cost-sharing contract, the estimated cost to the Government specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer (i) notifies the Contractor in writing

that the estimated cost has been increased and (ii) provides a revised estimated total cost of performing this contract. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(e) No notice, communication, or representation in any form other than that specified in paragraph (d)(2) of this clause, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost or, if this is a cost-sharing contract, for any costs in excess of the estimated cost to the Government specified in the Schedule, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(h) If this contract is terminated or the estimated cost is not increased, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(End of clause)

52.232-21 Limitation of Cost (Facilities).

As prescribed in 32.705-2(b), insert the following clause in solicitations and contracts for consolidated facilities, facilities acquisition, or facilities use (see 45.301):

LIMITATION OF COST (FACILITIES) (APR 1984)

(a) The parties estimate that performance of this contract will not cost Government more than the estimated cost specified in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule within the estimated cost.

(b) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that—

(1) The costs that the Contractor expects to incur under this contract in the next 30 days, when added to all costs previously incurred, will exceed 85 percent of the estimated cost specified in the Schedule; or

(2) The total cost to the Government for the performance of this contract will be either greater or substantially less than had previously been estimated.

(c) As part of the notification, the Contractor shall provide the Contracting Officer a revised estimate of the total cost of performing this contract.

(d) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the contractor for costs incurred in excess of the estimated cost specified in the Schedule; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of the estimated cost specified in the Schedule, until the Contracting Officer—

(i) Notifies the Contractor in writing that the estimated cost has been increased; and

(ii) Provides a revised estimated total cost of performing this contract.

(e) No notice, communication, or representation in any form other than specified in paragraph (d)(2) of this clause, or from any person other than the Contracting Officer, shall affect this contract's estimated cost to the Government. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the estimated cost, whether those excess costs were incurred during the course of the contract or as a result of termination.

(f) If the estimated cost specified in the Schedule is increased, any costs the Contractor incurs before the increase that are in excess of the previously estimated cost shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice directing that the increase is solely to cover termination or other specified expenses.

(g) Change orders shall not be considered an authorization to exceed the estimated cost to the Government specified in the Schedule, unless they contain a statement increasing the estimated cost.

(End of clause)

52.232-22 Limitation of Funds.

As prescribed in 32.705-2(c), insert the following clause in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated. The 60-day period may be varied from 30 to 90 days and the 75 percent from 75 to 85 percent. "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause.

LIMITATION OF FUNDS (APR 1984)

(a) The parties estimate that performance of this contract will not cost the Government more than (1) the estimated cost specified in the Schedule or, (2) if this is a cost-sharing contract, the Government's share of the estimated cost specified

in the Schedule. The Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within the estimated cost, which, if this is a cost-sharing contract, includes both the Government's and the Contractor's share of the cost.

(b) The Schedule specifies the amount presently available for payment by the Government and allotted to this contract, the items covered, the Government's share of the cost if this is a cost-sharing contract, and the period of performance it is estimated the allotted amount will cover. The parties contemplate that the Government will allot additional funds incrementally to the contract up to the full estimated cost to the Government specified in the Schedule, exclusive of any fee. The Contractor agrees to perform, or have performed, work on the contract up to the point at which the total amount paid and payable by the Government under the contract approximates but does not exceed the total amount actually allotted by the Government to the contract.

(c) The Contractor shall notify the Contracting Officer in writing whenever it has reason to believe that the costs it expects to incur under this contract in the next 60 days, when added to all costs previously incurred, will exceed 75 percent of (1) the total amount so far allotted to the contract by the Government or, (2) if this is a cost-sharing contract, the amount then allotted to the contract by the Government plus the Contractor's corresponding share. The notice shall state the estimated amount of additional funds required to continue performance for the period specified in the Schedule.

(d) Sixty days before the end of the period specified in the Schedule, the Contractor shall notify the Contracting Officer in writing of the estimated amount of additional funds, if any, required to continue timely performance under the contract or for any further period specified in the Schedule or otherwise agreed upon, and when the funds will be required.

(e) If, after notification, additional funds are not allotted by the end of the period specified in the Schedule or another agreed-upon date, upon the Contractor's written request the Contracting Officer will terminate this contract on that date in accordance with the provisions of the Termination clause of this contract. If the Contractor estimates that the funds available will allow it to continue to discharge its obligations beyond that date, it may specify a later date in its request, and the Contracting Officer may terminate this contract on that later date.

(f) Except as required by other provisions of this contract, specifically citing and stated to be an exception to this clause—

(1) The Government is not obligated to reimburse the Contractor for costs incurred in excess of the total amount allotted by the Government to this contract; and

(2) The Contractor is not obligated to continue performance under this contract (including actions under the Termination clause of this contract) or otherwise incur costs in excess of—

(i) The amount then allotted to the contract by the Government or;

(ii) If this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, until the Contracting Officer notifies the Contractor in writing that the amount allotted by the Government has been increased and specifies an increased amount, which shall then constitute the total amount allotted by the Government to this contract.

(g) The estimated cost shall be increased to the extent that (1) the amount allotted by the Government or, (2) if this is a cost-sharing contract, the amount then allotted by the Government to the contract plus the Contractor's corresponding share, exceeds the estimated cost specified in the Schedule. If this is a cost-sharing contract, the increase shall be allocated in accordance with the formula specified in the Schedule.

(h) No notice, communication, or representation in any form other than that specified in paragraph (f)(2) of this clause, or from any person other than the Contracting Officer, shall affect the amount allotted by the Government to this contract. In the absence of the specified notice, the Government is not obligated to reimburse the Contractor for any costs in excess of the total amount allotted by the Government to this contract, whether incurred during the course of the contract or as a result of termination.

(i) When and to the extent that the amount allotted by the Government to the contract is increased, any costs the Contractor incurs before the increase that are in excess of—

(1) The amount previously allotted by the Government or;

(2) If this is a cost-sharing contract, the amount previously allotted by the Government to the contract plus the Contractor's corresponding share, shall be allowable to the same extent as if incurred afterward, unless the Contracting Officer issues a termination or other notice and directs that the increase is solely to cover termination or other specified expenses.

(j) Change orders shall not be considered an authorization to exceed the amount allotted by the Government specified in the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a

percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

(End of clause)

52.232-23 Assignment of Claims.

As prescribed in 32.806(a)(1), insert the following clause:

ASSIGNMENT OF CLAIMS (JAN 1986)

(a) The Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

Alternate I (Apr 1984). If a no-setoff commitment is to be included in the contract (see 32.801 and 32.803(d)), add the following sentence at the end of paragraph (a) of the basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

52.232-24 Prohibition of Assignment of Claims.

As prescribed in 32.806(b), insert the following clause:

PROHIBITION OF ASSIGNMENT OF CLAIMS (Jan 1986)

The assignment of claims under the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, is prohibited for this contract.

(End of clause)

52.232-25 [Reserved]

52.232-26 [Reserved]

52.232-27 [Reserved]

52.232-28 Invitation to Propose Performance-Based Payments.

As prescribed in 32.1005(b)(1), insert the following provision:

INVITATION TO PROPOSE PERFORMANCE-BASED PAYMENTS (MAR 2000)

(a) The Government invites the offeror to propose terms under which the Government will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror's proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the MMAR clause, Performance-Based Payments, at MMAR 52.232-32, in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at MMAR 52.232-32, Performance-Based Payments, the terms of the clause at MMAR 52.232-32 shall govern.

(c) The Contracting Officer will not accept the offeror's proposed performance-based payment financing if the financing does not conform to the following limitations:

(1) The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must—

(i) Comply with MMAR 32.1004;

(ii) Be reasonable and consistent with all other technical and cost information included in the offeror's proposal; and

(iii) Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the Government.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see MMAR 32.1004 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) Information addressing the Contractor's investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms will include whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(End of provision)

Alternate 1 (Mar 2000). As prescribed in MMAR 32.1005(b)(2), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in MMAR 32.205(c).

52.232-29 Terms for Financing of Purchases of Commercial Items.

As prescribed in 32.206(b)(2), insert the following clause:

TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS (FEB 2002)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to pro-

vide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) *Reservation of rights.* (1) No payment or other action by the Government under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.

(g) *Dates for payment.* A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment.

(h) *Conflict between terms of offeror and clause.* In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

52.232-30 Installment Payments for Commercial Items.

As prescribed in 32.206(g), insert the following clause:

INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (OCT 1995)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Computation of amounts.* Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

(1) *Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.

(2) *Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

(3) *Date of each installment payment.* Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.

(4) *Limitation on payment.* Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

(c) *Contractor request for installment payment.* The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested

shall be included in a single request, appropriately itemized and totaled.

(d) *Dates for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph (e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.

(e) *Liquidation of installment payments.* Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(f) *Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the Contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items.

(h) *Reservation of rights.* (1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair

any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for installment payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made; and
- (4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

52.232-31 Invitation to Propose Financing Terms.

As prescribed in 32.205(b) and 32.206, insert the following provision:

INVITATION TO PROPOSE FINANCING TERMS (OCT 1995)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at 52.232-29, shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at 52.232-29, Terms for Financing of Purchases of Commercial Items, the terms of the clause at 52.232-29 shall govern.

(c) The offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

- (1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;
- (2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract;
- (3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and
- (4) The terms and conditions of the contract financing must be in the best interests of the United States.

(d) The offeror's proposal of financing terms shall include the following:

- (1) The proposed contractual language describing the contract financing (see MMAR 32.202-2 for appropriate definitions of types of payments); and

(2) A listing of the earliest date and greatest amount at which each contract financing payment may be payable and the amount of each delivery payment. Any resulting contract shall provide that no contract financing payment shall be made at any earlier date or in a greater amount than shown in the offeror's listing.

(e) The offeror's proposed prices and financing terms shall be evaluated to determine the cost to the United States of the proposal using the interest rate and delivery schedule specified elsewhere in this solicitation.

(End of provision)

52.232-32 Performance-Based Payments.

As prescribed in 32.1005, insert the following clause:

PERFORMANCE-BASED PAYMENTS (FEB 2002)

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and totaled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

(c) *Approval and payment of requests.* (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the _____ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"] day after receipt of the request for performance-based payment. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquires into the status of an

event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

(d) *Liquidation of performance-based payments.* (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's—

- (i) Failure to make progress; or
- (ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) *Title.* (1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) “Property,” as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title under any other clause of this contract;

(iii) Nondurable (*i.e.*, noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (*e.g.*, the termination or special tooling clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor must obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not—

(i) Delivered to, and accepted by, the Government under this contract; or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss.* Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly

assumes the risk. If any property is damaged, lost, stolen, or destroyed, the basis of payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default.* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;

- (2) The date of the request for performance-based payment;

- (3) The contract number and/or other identifier of the contract or order under which the request is made;

- (4) Such information and documentation as is required by the contract's description of the basis for payment; and

- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that—

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;

- (2) (Except as reported in writing on _____), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;

- (3) There are no encumbrances (except as reported in writing on _____) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;

- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated _____; and

- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

As prescribed in 32.1110(a)(1), insert the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER—CENTRAL CONTRACTOR REGISTRATION (MAY 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

- (2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information.* The Government shall make payment to the Contractor using the EFT information contained in the Central Contractor Registration (CCR) database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the CCR database.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in the CCR database is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into the CCR database; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) *Contractor EFT arrangements.* If the Contractor has identified multiple payment receiving points (*i.e.*, more than one remittance address and/or EFT information set) in the CCR database, and the Contractor has not notified the Government of the payment receiving point applicable to this contract, the Government shall make payment to the first payment receiving point (EFT information set or remittance address as applicable) listed in the CCR database.

(f) *Liability for uncompleted or erroneous transfers.*

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, 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 the Contractor's EFT information was incorrect, or was revised within 30 days 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 pay-

ment 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 shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(g) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released 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.

(h) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register in the CCR database and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that 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 (d) of this clause.

(i) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(j) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in the CCR database.

(End of clause)

52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

As prescribed in 32.1110(a)(2), insert the following clause:

PAYMENT BY ELECTRONIC FUNDS TRANSFER—OTHER
THAN CENTRAL CONTRACTOR REGISTRATION
(MAY 1999)

(a) *Method of payment.* (1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend payment due dates until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).

(b) *Mandatory submission of Contractor’s EFT information.* (1) The Contractor is required to provide the Government with the information required to make payment by EFT (see paragraph (j) of this clause). The Contractor shall provide this information directly to the office designated in this contract to receive that information (hereafter: “designated office”) by _____ [the Contracting Officer shall insert date, days after award, days before first request, the date specified for receipt of offers if the provision at 52.232-38 is utilized, or “concurrent with first request” as prescribed by the head of the agency; if not prescribed, insert “no later than 15 days prior to submission of the first request for payment”]. If not otherwise specified in this contract, the payment office is the designated office for receipt of the Contractor’s EFT information. If more than one designated office is named for the contract, the Contractor shall provide a separate notice to each office. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the designated office(s).

(2) If the Contractor provides EFT information applicable to multiple contracts, the Contractor shall specifically state the applicability of this EFT information in terms acceptable to the designated office. However, EFT information supplied to a designated office shall be applicable only to contracts that identify that designated office as the office to receive EFT information for that contract.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* (1) The Government is not required to make any payment under this contract until after receipt, by the designated office, of the correct EFT payment information from the Contractor. Until receipt of the correct EFT information, any invoice or contract financing request

shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the Contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor’s request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor’s EFT information incorrectly, 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 the Contractor’s EFT information was incorrect, or was revised within 30 days 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 shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released 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.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that 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 (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.

As prescribed in 32.1110(c), insert the following clause:

DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF
ELECTRONIC FUNDS TRANSFER INFORMATION
(MAY 1999)

(a) As provided in paragraph (b) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

Mailing Address:

Telephone Number:

Person to Contact:

Electronic Address:

(End of clause)

52.232-36 Payment by Third Party.

As prescribed in 32.1110(d), insert the following clause:

PAYMENT BY THIRD PARTY (MAY 1999)

(a) *General.* The Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(b) *Contractor payment request.* In accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor, the Contractor shall make such payment requests through a charge to the Government account with the third

party, at the time and for the amount due in accordance with the terms of this contract.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

52.232-37 Multiple Payment Arrangements.

As prescribed in 32.1110(e), insert the following clause:

MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

52.232-38 Submission of Electronic Funds Transfer Information with Offer.

As prescribed in 32.1110(g), insert the following provision:

SUBMISSION OF ELECTRONIC FUNDS TRANSFER INFORMATION WITH OFFER (MAY 1999)

The offeror shall provide, with its offer, the following information that is required to make payment by electronic funds transfer (EFT) under any contract that results from this solicitation. This submission satisfies the requirement to provide EFT information under paragraphs (b)(1) and (j) of the clause at 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration.

(1) The solicitation number (or other procurement identification number).

(2) The offeror's name and remittance address, as stated in the offer.

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the offeror's official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the offeror's financial agent.

(5) The offeror's account number and the type of account (checking, savings, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the offeror's financial agent.

(7) If applicable, the offeror shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the offeror's financial agent is not directly on-line to the Fedwire and, therefore, not the receiver of the wire transfer payment.

(End of provision)

52.233-1 Disputes.

As prescribed in 33.215, insert the following clause:

DISPUTES (JULY 2002)

(a) This contract is not subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) All disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

52.233-2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Materials Management Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____ . [*Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.*]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.233-3 Protest after Award.

As prescribed in 33.106(b), insert the following clause:

PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in MMAR 33.101) or a determination that a protest is likely (see MMAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable

steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work 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 this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in MMAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

Alternate I (June 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termina-

tion for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both".

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE PRODUCTION ACT TITLE III (DEC 1994)

(a) *Definitions.* "Title III industrial resource" means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

"Title III project contractor" means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

52.235 [Reserved]

52.236-1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to exceed \$1,000,000. The Contracting Officer may insert the clause in solicitations and contracts when a fixed-price con-

struction contract is contemplated and the contract amount is expected to be \$1,000,000 or less. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)).

PERFORMANCE OF WORK BY THE CONTRACTOR
(APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least _____ [insert the appropriate number in words followed by numerals in parentheses] percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

52.236-2 Differing Site Conditions.

As prescribed in 36.502, insert the following clause:

DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of—

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giving written notice may be extended by the Contracting Officer.

(d) No request by the Contractor for an equitable adjustment to the contract for differing site conditions shall be allowed if made after final payment under this contract.

(End of clause)

52.236-3 Site Investigation and Conditions Affecting the Work.

As prescribed in 36.503, insert the following clause:

SITE INVESTIGATION AND CONDITIONS AFFECTING THE
WORK (APR 1984)

(a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to (1) conditions bearing upon transportation, disposal, handling, and storage of materials; (2) the availability of labor, water, electric power, and roads; (3) uncertainties of weather, river stages, tides, or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) the character of equipment and facilities needed preliminary to and during work performance. The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract. Any failure of the Contractor to take the actions described and acknowledged in this paragraph will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the work, or for proceeding to successfully perform the work without additional expense to the Government.

(b) The Government assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available by the Government. Nor does the Government assume responsibility for any understanding reached or representation made concerning conditions which can affect the work by any of its officers or agents before the execution of this contract, unless that understanding or representation is expressly stated in this contract.

(End of clause)

52.236-4 Physical Data.

As prescribed in 36.504, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (*e.g.*, test borings, hydrographic, weather conditions data) will be furnished or made available to offerors. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause. When paragraphs are not applicable they may be deleted.

PHYSICAL DATA (APR 1984)

Data and information furnished or referred to below is for the Contractor's information. The Government shall not be

responsible for any interpretation of or conclusion drawn from the data or information by the Contractor. (a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by _____ [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions _____ [insert a summary of weather records and warnings].

(c) Transportation facilities _____ [insert a summary of transportation facilities providing access from the site, including information about their availability and limitations].

(d) _____ [insert other pertinent information].

(End of clause)

52.236-5 Material and Workmanship.

As prescribed in 36.505, insert the following clause:

MATERIAL AND WORKMANSHIP (APR 1984)

(a) All equipment, material, and articles incorporated into the work covered by this contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in this contract. References in the specifications to equipment, material, articles, or patented processes by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. The Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of the Contracting Officer, is equal to that named in the specifications, unless otherwise specifically provided in this contract.

(b) The Contractor shall obtain the Contracting Officer's approval of the machinery and mechanical and other equipment to be incorporated into the work. When requesting approval, the Contractor shall furnish to the Contracting Officer the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and mechanical and other equipment. When required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval of the material or articles which the Contractor contemplates incorporating into the work. When requesting approval, the Contractor shall provide full information concerning the material or articles. When directed to do so, the Contractor shall submit samples for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

(c) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer

may require, in writing, that the Contractor remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

(End of clause)

52.236-6 Superintendence by the Contractor.

As prescribed in 36.506, insert the following clause:

SUPERINTENDENCE BY THE CONTRACTOR (APR 1984)

At all times during performance of this contract and until the work is completed and accepted, the Contractor shall directly superintend the work or assign and have on the work-site a competent superintendent who is satisfactory to the Contracting Officer and has authority to act for the Contractor.

(End of clause)

52.236-7 Permits and Responsibilities.

As prescribed in 36.507, insert the following clause:

PERMITS AND RESPONSIBILITIES (NOV 1991)

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any Federal, State, and municipal laws, codes, and regulations applicable to the performance of the work. The Contractor shall also be responsible for all damages to persons or property that occur as a result of the Contractor's fault or negligence. The Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire work, except for any completed unit of work which may have been accepted under the contract.

(End of clause)

52.236-8 Other Contracts.

As prescribed in 36.508, insert the following clause:

OTHER CONTRACTS (APR 1984)

The Government may undertake or award other contracts for additional work at or near the site of the work under this contract. The Contractor shall fully cooperate with the other contractors and with Government employees and shall carefully adapt scheduling and performing the work under this contract to accommodate the additional work, heeding any direction that may be provided by the Contracting Officer. The Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Government employees.

(End of clause)

52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.

As prescribed in 36.509, insert the following clause:

PROTECTION OF EXISTING VEGETATION, STRUCTURES,
EQUIPMENT, UTILITIES, AND IMPROVEMENTS (APR 1984)

(a) The Contractor shall preserve and protect all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not unreasonably interfere with the work required under this contract. The Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during contract performance, or by the careless operation of equipment, or by workmen, the Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree-pruning compound as directed by the Contracting Officer.

(b) The Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site, and (2) on adjacent property of a third party, the locations of which are made known to or should be known by the Contractor. The Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of this contract or failure to exercise reasonable care in performing the work. If the Contractor fails or refuses to repair the damage promptly, the Contracting Officer may have the necessary work performed and charge the cost to the Contractor.

(End of clause)

52.236-10 Operations and Storage Areas.

As prescribed in 36.510, insert the following clause:

OPERATIONS AND STORAGE AREAS (APR 1984)

(a) The Contractor shall confine all operations (including storage of materials) on Government premises to areas authorized or approved by the Contracting Officer. The Contractor shall hold and save the Government, its officers and agents, free and harmless from liability of any nature occasioned by the Contractor's performance.

(b) Temporary buildings (*e.g.*, storage sheds, shops, offices) and utilities may be erected by the Contractor only with the approval of the Contracting Officer and shall be built with labor and materials furnished by the Contractor without expense to the Government. The temporary buildings and utilities shall remain the property of the Contractor and shall be removed by the Contractor at its expense upon completion of the work. With the written consent of the Contracting Officer, the buildings and utilities may be abandoned and need not be removed.

(c) The Contractor shall, under regulations prescribed by the Contracting Officer, use only established roadways, or use

temporary roadways constructed by the Contractor when and as authorized by the Contracting Officer. When materials are transported in prosecuting the work, vehicles shall not be loaded beyond the loading capacity recommended by the manufacturer of the vehicle or prescribed by any Federal, State, or local law or regulation. When it is necessary to cross curbs or sidewalks, the Contractor shall protect them from damage. The Contractor shall repair or pay for the repair of any damaged curbs, sidewalks, or roads.

(End of clause)

52.236-11 Use and Possession Prior to Completion.

As prescribed in 36.511, insert the following clause:

USE AND POSSESSION PRIOR TO COMPLETION (APR 1984)

(a) The Government shall have the right to take possession of or use any completed or partially completed part of the work. Before taking possession of or using any work, the Contracting Officer shall furnish the Contractor a list of items of work remaining to be performed or corrected on those portions of the work that the Government intends to take possession of or use. However, failure of the Contracting Officer to list any item of work shall not relieve the Contractor of responsibility for complying with the terms of the contract. The Government's possession or use shall not be deemed an acceptance of any work under the contract.

(b) While the Government has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the work resulting from the Government's possession or use, notwithstanding the terms of the clause in this contract entitled "Permits and Responsibilities." If prior possession or use by the Government delays the progress of the work or causes additional expense to the Contractor, an equitable adjustment shall be made in the contract price or the time of completion, and the contract shall be modified in writing accordingly.

(End of clause)

52.236-12 Cleaning Up.

As prescribed in 36.512, insert the following clause:

CLEANING UP (APR 1984)

The Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the work, the Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Government. Upon completing the work, the Contractor shall leave the work area in a clean, neat, and orderly condition satisfactory to the Contracting Officer.

(End of clause)

52.236-13 Accident Prevention.

As prescribed in 36.513, insert the following clause:

ACCIDENT PREVENTION (NOV 1991)

(a) The Contractor shall provide and maintain work environments and procedures which will—

(1) Safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to Contractor operations and activities;

(2) Avoid interruptions of Government operations and delays in project completion dates; and

(3) Control costs in the performance of this contract.

(b) For these purposes on contracts for construction or dismantling, demolition, or removal of improvements, the Contractor shall—

(1) Provide appropriate safety barricades, signs, and signal lights;

(2) Comply with the standards issued by the Secretary of Labor at 29 CFR part 1926 and 29 CFR part 1910; and

(3) Ensure that any additional measures the Contracting Officer determines to be reasonably necessary for the purposes are taken.

(c) Whenever the Contracting Officer becomes aware of any noncompliance with these requirements or any condition which poses a serious or imminent danger to the health or safety of the public or Government personnel, the Contracting Officer shall notify the Contractor orally, with written confirmation, and request immediate initiation of corrective action. This notice, when delivered to the Contractor or the Contractor's representative at the work site, shall be deemed sufficient notice of the noncompliance and that corrective action is required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to promptly take corrective action, the Contracting Officer may issue an order stopping all or part of the work until satisfactory corrective action has been taken. The Contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any stop work order issued under this clause.

(d) The Contractor shall insert this clause, including this paragraph (e), with appropriate changes in the designation of the parties, in subcontracts.

(End of clause)

Alternate I (Nov 1991). If the contract will involve (a) work of a long duration or hazardous nature, or (b) performance on a Government facility that on the advice of technical representatives involves hazardous materials or operations that might endanger the safety of the public and/or Government personnel or property, add the following paragraph (f) to the basic clause:

(f) Before commencing the work, the Contractor shall—

(1) Submit a written proposed plan for implementing this clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in contract work performance and a plan for controlling these hazards; and

(2) Meet with representatives of the Contracting Officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

52.236-14 Availability and Use of Utility Services.

As prescribed in 36.514, insert the following clause in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites when the contracting officer decides (a) that the existing utility system is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

AVAILABILITY AND USE OF UTILITY SERVICES (APR 1984)

(a) The Government shall make all reasonably required amounts of utilities available to the Contractor from existing outlets and supplies, as specified in the contract. Unless otherwise provided in the contract, the amount of each utility service consumed shall be charged to or paid for by the Contractor at prevailing rates charged to the Government or, where the utility is produced by the Government, at reasonable rates determined by the Contracting Officer. The Contractor shall carefully conserve any utilities furnished without charge.

(b) The Contractor, at its expense and in a workmanlike manner satisfactory to the Contracting Officer, shall install and maintain all necessary temporary connections and distribution lines, and all meters required to measure the amount of each utility used for the purpose of determining charges. Before final acceptance of the work by the Government, the Contractor shall remove all the temporary connections, distribution lines, meters, and associated paraphernalia.

(End of clause)

52.236-15 Schedules for Construction Contracts.

As prescribed in 36.515, insert the following clause:

SCHEDULES FOR CONSTRUCTION CONTRACTS (APR 1984)

(a) The Contractor shall, within five days after the work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plant, and

equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribed, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

(b) The Contractor shall enter the actual progress on the chart as directed by the Contracting Officer, and upon doing so shall immediately deliver three copies of the annotated schedule to the Contracting Officer. If, in the opinion of the Contracting Officer, the Contractor falls behind the approved schedule, the Contractor shall take steps necessary to improve its progress, including those that may be required by the Contracting Officer, without additional cost to the Government. In this circumstance, the Contracting Officer may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules in chart form as the Contracting Officer deems necessary to demonstrate how the approved rate of progress will be regained.

(c) Failure of the Contractor to comply with the requirements of the Contracting Officer under this clause shall be grounds for a determination by the Contracting Officer that the Contractor is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the Contracting Officer may terminate the Contractor's right to proceed with the work, or any separable part of it, in accordance with the default terms of this contract.

(End of clause)

52.236-16 Quantity Surveys.

As prescribed in 36.516, the contracting officer may insert the following clause in solicitations and contracts when a fixed-price construction contract providing for unit pricing of items and for payment based on quantity surveys is contemplated:

QUANTITY SURVEYS (APR 1984)

(a) Quantity surveys shall be conducted, and the data derived from these surveys shall be used in computing the quantities of work performed and the actual construction completed and in place.

(b) The Government shall conduct the original and final surveys and make the computations based on them. The Contractor shall conduct the surveys for any periods for which progress payments are requested and shall make the computations based on these surveys. All surveys conducted by the Contractor shall be conducted under the direction of a repre-

sentative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance.

(c) Promptly upon completing a survey, the Contractor shall furnish the originals of all field notes and all other records relating to the survey or to the layout of the work to the Contracting Officer, who shall use them as necessary to determine the amount of progress payments. The Contractor shall retain copies of all such material furnished to the Contracting Officer.

(End of clause)

Alternate I (Apr 1984). If it is determined at a level above that of the Contracting Officer that it is impracticable for Government personnel to perform the original and final surveys, and the Government wishes the Contractor to perform these surveys, substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Contractor shall conduct the original and final surveys and surveys for any periods for which progress payments are requested. All these surveys shall be conducted under the direction of a representative of the Contracting Officer, unless the Contracting Officer waives this requirement in a specific instance. The Government shall make such computations as are necessary to determine the quantities of work performed or finally in place. The Contractor shall make the computations based on the surveys for any periods for which progress payments are requested.

52.236-17 Layout of Work.

As prescribed in 36.517, insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated and use of this clause is appropriate due to a need for accurate work layout and for siting verification during work performance:

LAYOUT OF WORK (APR 1984)

The Contractor shall lay out its work from Government established base lines and bench marks indicated on the drawings, and shall be responsible for all measurements in connection with the layout. The Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to lay out any part of the work. The Contractor shall be responsible for executing the work to the lines and grades that may be established or indicated by the Contracting Officer. The Contractor shall also be responsible for maintaining and preserving all stakes and other marks established by the Contracting Officer until authorized to remove them. If such marks are destroyed by the Contractor or through its negligence before their removal is authorized, the Contracting Officer may replace them and deduct the expense of the replacement from any amounts due or to become due to the Contractor.

(End of clause)

52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.

As prescribed in 36.518, insert the following clause in solicitations and contracts when cost-reimbursement construction contracts are contemplated:

WORK OVERSIGHT IN COST-REIMBURSEMENT
CONSTRUCTION CONTRACTS (APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236-19 Organization and Direction of the Work.

As prescribed in 36.519, insert the following clause in solicitations and contracts when a cost-reimbursement construction contract is contemplated:

ORGANIZATION AND DIRECTION OF THE WORK
(APR 1984)

(a) When this contract is executed, the Contractor shall submit to the Contracting Officer a chart showing the general executive and administrative organization, the personnel to be employed in connection with the work under this contract, and their respective duties. The Contractor shall keep the data furnished current by supplementing it as additional information becomes available.

(b) Work performance under this contract shall be under the full-time resident direction of (1) the Contractor, if the Contractor is an individual; (2) one or more principal partners, if the Contractor is a partnership; or (3) one or more senior officers, if Contractor is a corporation, association, or similar legal entity. However, if the Contracting Officer approves, the Contractor may be represented in the direction of the work by a specific person or persons holding positions other than those identified in this paragraph.

(End of clause)

52.236-20 [Reserved]**52.236-21 Specifications and Drawings for Construction.**

As prescribed in 36.521, insert the following clause:

SPECIFICATIONS AND DRAWINGS FOR CONSTRUCTION
(FEB 1997)

(a) The Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the speci-

cations shall govern. In case of discrepancy in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense. The Contracting Officer shall furnish from time to time such detailed drawings and other information as considered necessary, unless otherwise provided.

(b) Wherever in the specifications or upon the drawings the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription", of the Contracting Officer is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by," or "acceptable to", or "satisfactory to" the Contracting Officer, unless otherwise expressly stated.

(c) Where "as shown," as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying this contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".

(d) Shop drawings means drawings, submitted to the Government by the Contractor, subcontractor, or any lower tier subcontractor pursuant to a construction contract, showing in detail (1) the proposed fabrication and assembly of structural elements, and (2) the installation (*i.e.*, fit, and attachment details) of materials or equipment. It includes drawings, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by the contractor to explain in detail specific portions of the work required by the contract. The Government may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under this contract.

(e) If this contract requires shop drawings, the Contractor shall coordinate all such drawings, and review them for accuracy, completeness, and compliance with contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the Contracting Officer without evidence of the Contractor's approval may be returned for resubmission. The Contracting Officer will indicate an approval or disapproval of the shop drawings and if not approved as submitted shall indicate the Government's reasons therefor. Any work done before such approval shall be at the Contractor's risk. Approval by the Contracting Officer shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of this contract, except with respect to variations described and approved in accordance with (f) of this clause.

(f) If shop drawings show variations from the contract requirements, the Contractor shall describe such variations in

writing, separate from the drawings, at the time of submission. If the Contracting Officer approves any such variation, the Contracting Officer shall issue an appropriate contract modification, except that, if the variation is minor or does not involve a change in price or in time of performance, a modification need not be issued.

(g) The Contractor shall submit to the Contracting Officer for approval four copies (unless otherwise indicated) of all shop drawings as called for under the various headings of these specifications. Three sets (unless otherwise indicated) of all shop drawings, will be retained by the Contracting Officer and one set will be returned to the Contractor.

(End of clause)

Alternate I (Apr 1984). When record shop drawings are required and reproducible shop drawings are needed, add the following sentences to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish a complete set of all shop drawings as finally approved. These drawings shall show all changes and revisions made up to the time the equipment is completed and accepted.

Alternate II (Apr 1984). When record shop drawings are required and reproducible shop drawings are not needed, the following sentences shall be added to paragraph (g) of the basic clause:

Upon completing the work under this contract, the Contractor shall furnish _____ [*Contracting Officer complete by inserting desired amount*] sets of prints of all shop drawings as finally approved. These drawings shall show changes and revisions made up to the time the equipment is completed and accepted.

52.236-22 Design Within Funding Limitations.

As prescribed in 36.609-1(c), insert the following clause:

DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

(a) The Contractor shall accomplish the design services required under this contract so as to permit the award of a contract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction contract price as set forth in paragraph (c) of this clause. When bids or proposals for the construction contract are received that exceed the estimated price, the contractor shall perform such redesign and other services as are necessary to permit contract award within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, the Contractor shall not be required to perform such additional services at no cost to the Government if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.

(b) The Contractor will promptly advise the Contracting Officer if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the Contracting Officer will review the Contractor's revised estimate of construction cost. The Government may, if it determines that the estimated construction contract price set forth in this contract is so low that award of a construction contract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction contract price set forth in paragraph (c) of this clause, or the Government may adjust such estimated construction contract price. When bids or proposals are not solicited or are unreasonably delayed, the Government shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

(c) The estimated construction contract price for the project described in this contract is \$_____.

(End of clause)

52.236-23 Responsibility of the Architect-Engineer Contractor.

As prescribed in 36.609-2(b), insert the following clause:

RESPONSIBILITY OF THE ARCHITECT-ENGINEER CONTRACTOR (APR 1984)

(a) The Contractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Contractor under this contract. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.

(b) Neither the Government's review, approval or acceptance of, nor payment for, the services required under this contract shall be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the performance of this contract, and the Contractor shall be and remain liable to the Government in accordance with applicable law for all damages to the Government caused by the Contractor's negligent performance of any of the services furnished under this contract.

(c) The rights and remedies of the Government provided for under this contract are in addition to any other rights and remedies provided by law.

(d) If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

(End of clause)

52.236-24 Work Oversight in Architect-Engineer Contracts.

As prescribed in 36.609-3, insert the following clause:

WORK OVERSIGHT IN ARCHITECT-ENGINEER CONTRACTS
(APR 1984)

The extent and character of the work to be done by the Contractor shall be subject to the general oversight, supervision, direction, control, and approval of the Contracting Officer.

(End of clause)

52.236-25 Requirements for Registration of Designers.

As prescribed in 36.609-4, insert the following clause:

REQUIREMENTS FOR REGISTRATION OF DESIGNERS
(APR 1984)

The design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work shall be accomplished or reviewed and approved by architects or engineers registered to practice in the particular professional field involved in a State or possession of the United States, in Puerto Rico, or in the District of Columbia.

(End of clause)

52.236-26 Preconstruction Conference.

As prescribed in 36.522, insert the following clause:

PRECONSTRUCTION CONFERENCE (FEB 1995)

If the Contracting Officer decides to conduct a preconstruction conference, the successful offeror will be notified and will be required to attend. The Contracting Officer's notification will include specific details regarding the date, time, and location of the conference, any need for attendance by subcontractors, and information regarding the items to be discussed.

(End of clause)

52.236-27 Site Visit (Construction).

As prescribed in 36.523, insert a provision substantially the same as the following:

SITE VISIT (CONSTRUCTION) (FEB 1995)

(a) The clauses at 52.236-2, Differing Site Conditions, and 52.236-3, Site Investigations and Conditions Affecting the Work, will be included in any contract awarded as a result of this solicitation. Accordingly, offerors or quoters are urged and expected to inspect the site where the work will be performed.

(b) Site visits may be arranged during normal duty hours by contacting:

Name: _____

Address: _____

Telephone: _____

(End of provision)

Alternate 1 (Feb 1995). If an organized site visit will be conducted, substitute a paragraph substantially the same as the following for paragraph (b) of the basic provision:

(b) An organized site visit has been scheduled for—

_____ [Insert date and time]

(c) Participants will meet at—

_____ [Insert location]

(End of provision)

52.236-28 Preparation of Proposals—Construction.

As prescribed in 36.520, insert the following provision:

PREPARATION OF PROPOSALS—CONSTRUCTION
(OCT 1997)

(a) Proposals must be (1) submitted on the forms furnished by the Government or on copies of those forms; and (2) manually signed. The person signing a proposal must initial each erasure or change appearing on any proposal form.

(b) The proposal form may require offerors to submit proposed prices for one or more items on various bases, including—

(1) Lump sum price;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of paragraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires submission of a proposal on all items, failure to do so may result in the proposal being rejected without further consideration. If a proposal on all items is not required, offerors should insert the words "no proposal" in the space provided for any item on which no price is submitted.

(d) Alternate proposals will not be considered unless this solicitation authorizes their submission.

(End of provision)

52.237-1 Site Visit.

As prescribed in 37.110(a), insert the following provision:

SITE VISIT (APR 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the

information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.110(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT,
AND VEGETATION (APR 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

52.237-3 Continuity of Services.

As prescribed in 37.110(c), insert the following clause:

CONTINUITY OF SERVICES (JAN 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to—

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this

contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (*i.e.*, costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.304(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

PAYMENT BY GOVERNMENT TO CONTRACTOR (APR 1984)

(a) In _____ [*insert "full" if Alternate I is used; otherwise insert "partial"*] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor _____ [*fill in amount*].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) of this clause, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work.

The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

Alternate I (Apr 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

52.237-5 Payment by Contractor to Government.

As prescribed in 37.304(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within _____ days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay _____ [*fill in amount*]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.304(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements—

(a) If the Contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government; and

(b) If the Contracting Officer determines that it would be advantageous to the Government for the Contractor to pay in increments, and for the Government to transfer title to the Contractor for increments of property, only upon receipt of those payments:

INCREMENTAL PAYMENT BY CONTRACTOR TO GOVERNMENT (APR 1984)

(a) The Contractor shall perform the work called for under this contract and within ____ days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay ____ [*fill in amount*]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in 37.403, insert the following clause:

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE
(JAN 1997)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Materials Management Acquisition Regulation (MMAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: * _____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire

period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

52.237-8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113-2(a), use the following provision:

RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN
NATIONALS (OCT 1995)

(a) The Materials Management Acquisition Regulation (MMAR), at 31.205-6(g)(3), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the head of the agency, or designee, grants a waiver pursuant to MMAR 37.113-1 before contract award.

(b) In making the determination concerning the granting of a waiver, the head of the agency, or designee, will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for—

(i) Members of the armed forces stationed or deployed outside the United States; or

(ii) Employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

52.237-9 [Reserved]**52.237-10 Identification of Uncompensated Overtime.**

As prescribed in 37.115-3, insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME
(OCT 1997)

(a) *Definitions.* As used in this provision—

“Uncompensated overtime” means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

“Uncompensated overtime rate” is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\20.00×40 divided by 45 = \$17.78).

(b) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) The offeror’s accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

52.238 [Reserved]**52.239-1 Privacy or Security Safeguards.**

As prescribed in 39.107, insert a clause substantially the same as the following:

PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor’s facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party.

(End of clause)

52.240 [Reserved]

52.241 Utility Services Provisions and Clauses.**52.241-1 Electric Service Territory Compliance Representation.**

As prescribed in 41.501(b), insert a provision substantially the same as the following:

ELECTRIC SERVICE TERRITORY COMPLIANCE
REPRESENTATION (MAY 1999)

(a) Section 8093 of Public Law 100-202 generally requires purchases of electricity by any department, agency, or instrumentality of the United States to be consistent with State law governing the provision of electric utility service, including State utility commission rulings and electric utility franchises or service territories established pursuant to State statute, State regulation, or State-approved territorial agreements.

(b) By signing this offer, the offeror represents that this offer to sell electricity is consistent with Section 8093 of Public Law 100-202.

(c) Upon request of the Contracting Officer, the offeror shall submit supporting legal and factual rationale for this representation.

(End of provision)

52.241-2 Order of Precedence—Utilities.

As prescribed in 41.501(c)(1), insert a clause substantially the same as the following:

ORDER OF PRECEDENCE—UTILITIES (FEB 1995)

In the event of any inconsistency between the terms of this contract (including the specifications) and any rate schedule, rider, or exhibit incorporated in this contract by reference or otherwise, or any of the Contractor's rules and regulations, the terms of this contract shall control.

(End of clause)

52.241-3 Scope and Duration of Contract.

As prescribed in 41.501(c)(2), insert a clause substantially the same as the following:

SCOPE AND DURATION OF CONTRACT (FEB 1995)

(a) For the period _____, [*insert period of service*] the Contractor agrees to furnish and the Government agrees to purchase _____ [*insert type of service*] utility service in accordance with the applicable tariff(s), rules, and regulations as approved by the applicable governing regulatory body and as set forth in the contract.

(b) It is expressly understood that neither the Contractor nor the Government is under any obligation to continue any service under the terms and conditions of this contract beyond the expiration date.

(c) The Contractor shall provide the Government with one complete set of rates, terms, and conditions of service which are in effect as of the date of this contract and any subsequently approved rates.

(d) The Contractor shall be paid at the applicable rate(s) under the tariff and the Government shall be liable for the minimum monthly charge, if any, specified in this contract commencing with the period in which service is initially furnished and continuing for the term of this contract. Any minimum monthly charge specified in this contract shall be equitably prorated for the periods in which commencement and termination of this contract become effective.

(End of clause)

52.241-4 Change in Class of Service.

As prescribed in 41.501(c)(3), insert a clause substantially the same as the following:

CHANGE IN CLASS OF SERVICE (FEB 1995)

(a) In the event of a change in the class of service, such service shall be provided at the Contractor's lowest available rate schedule applicable to the class of service furnished.

(b) Where the Contractor does not have on file with the regulatory body approved rate schedules applicable to services provided, no clause in this contract shall preclude the parties from negotiating a rate schedule applicable to the class of service furnished.

(End of clause)

52.241-5 Contractor's Facilities.

As prescribed in 41.501(c)(4), insert a clause substantially the same as the following:

CONTRACTOR'S FACILITIES (FEB 1995)

(a) The Contractor, at its expense, unless otherwise provided for in this contract, shall furnish, install, operate, and maintain all facilities required to furnish service hereunder, and measure such service at the point of delivery specified in the Service Specifications. Title to all such facilities shall remain with the Contractor and the Contractor shall be responsible for loss or damage to such facilities, except that the Government shall be responsible to the extent that loss or damage has been caused by the Government's negligent acts or omissions.

(b) Notwithstanding any terms expressed in this clause, the Contractor shall obtain approval from the Contracting Officer prior to any equipment installation, construction, or removal. The Government hereby grants to the Contractor, free of any rental or similar charge, but subject to the limitations specified in this contract, a revocable permit or license to enter the service location for any proper purpose under this contract. This permit or license includes use of the site or sites agreed

upon by the parties hereto for the installation, operation, maintenance, and repair of the facilities of the Contractor required to be located upon Government premises. All applicable taxes and other charges in connection therewith, together with all liability of the Contractor in construction, operation, maintenance and repair of such facilities, shall be the obligation of the Contractor.

(c) Authorized representatives of the Contractor will be allowed access to the facilities on Government premises at reasonable times to perform the obligations of the Contractor regarding such facilities. It is expressly understood that the Government may limit or restrict the right of access herein granted in any manner considered necessary (e.g., national security, public safety).

(d) Unless otherwise specified in this contract, the Contractor shall, at its expense, remove such facilities and restore Government premises to their original condition as near as practicable within a reasonable time after the Government terminates this contract. In the event such termination of this contract is due to the fault of the Contractor, such facilities may be retained in place at the option of the Government for a reasonable time while the Government attempts to obtain service elsewhere comparable to that provided for hereunder.

(End of clause)

52.241-6 Service Provisions.

As prescribed in 41.501(c)(5), insert a clause substantially the same as the following:

SERVICE PROVISIONS (FEB 1995)

(a) *Measurement of service.* (1) All service furnished by the Contractor shall be measured by suitable metering equipment of standard manufacture, to be furnished, installed, maintained, repaired, calibrated, and read by the Contractor at its expense. When more than a single meter is installed at a service location, the readings thereof may be billed conjunctively, if appropriate. In the event any meter fails to register (or registers incorrectly) the service furnished, the parties shall agree upon the length of time of meter malfunction and the quantity of service delivered during such period of time. An appropriate adjustment shall be made to the next invoice for the purpose of correcting such errors. However, any meter which registers not more than ___ percent slow or fast shall be deemed correct.

(2) The Contractor shall read all meters at periodic intervals of approximately 30 days or in accordance with the policy of the cognizant regulatory body or applicable bylaws. All billings based on meter readings of less than ___ days shall be prorated accordingly.

(b) *Meter test.* (1) The Contractor, at its expense, shall periodically inspect and test Contractor-installed meters at intervals not exceeding _____ year(s). The Government has the right to have representation during the inspection and test.

(2) At the written request of the Contracting Officer, the Contractor shall make additional tests of any or all such meters in the presence of Government representatives. The cost of such additional tests shall be borne by the Government if the percentage of errors is found to be not more than ___ percent slow or fast.

(3) No meter shall be placed in service or allowed to remain in service which has an error in registration in excess of ___ percent under normal operating conditions.

(c) *Change in volume or character.* Reasonable notice shall be given by the Contracting Officer to the Contractor regarding any material changes anticipated in the volume or characteristics of the utility service required at each location.

(d) *Continuity of service and consumption.* The Contractor shall use reasonable diligence to provide a regular and uninterrupted supply of service at each service location, but shall not be liable for damages, breach of contract or otherwise, to the Government for failure, suspension, diminution, or other variations of service occasioned by or in consequence of any cause beyond the control of the Contractor, including but not limited to acts of God or of the public enemy, fires, floods, earthquakes, or other catastrophe, strikes, or failure or breakdown of transmission or other facilities. If any such failure, suspension, diminution, or other variation of service shall aggregate more than _____ hour(s) during any billing period hereunder, an equitable adjustment shall be made in the monthly billing specified in this contract (including the minimum monthly charge).

(End of clause)

52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.

As prescribed in 41.501(d)(1), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR REGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent services furnished under this contract are subject to regulation by a regulatory body. The Contractor agrees to give * _____ written notice of (1) the filing of an application for change in rates or terms and conditions of service concurrently with the filing of the application and (2) any changes pending with the regulatory body as of the date of contract award. Such notice shall fully describe the proposed change. If, during the term of this contract, the regulatory body having jurisdiction approves any changes, the Contractor shall forward to the Contracting Officer a copy of such changes within 15 days after the effective date thereof. The Contractor agrees to continue furnishing service under this contract in accordance with the amended tariff, and the Government agrees to pay for such service at the higher or lower rates as of the date when such rates are made effective.

(b) The Contractor agrees that throughout the life of this contract the applicable published and unpublished rate schedule(s) shall not be in excess of the lowest cost published and unpublished rate schedule(s) available to any other customers of the same class under similar conditions of use and service.

(c) In the event that the regulatory body promulgates any regulation concerning matters other than rates which affects this contract, the Contractor shall immediately provide a copy to the Contracting Officer. The Government shall not be bound to accept any new regulation inconsistent with Federal laws or regulations.

(d) Any changes to rates or terms and conditions of service shall be made a part of this contract by the issuance of a contract modification unless otherwise specified in the contract. The effective date of the change shall be the effective date by the regulatory body. Any factors not governed by the regulatory body will have an effective date as agreed to by the parties.

(End of clause)

* NOTE: Insert language prescribed in 41.501(d)(1).

52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.

As prescribed in 41.501(d)(2), insert a clause substantially the same as the following:

CHANGE IN RATES OR TERMS AND CONDITIONS OF SERVICE FOR UNREGULATED SERVICES (FEB 1995)

(a) This clause applies to the extent that services furnished hereunder are not subject to regulation by a regulatory body.

(b) After _____ [*insert date*], either party may request a change in rates or terms and conditions of service, unless otherwise provided in this contract. Both parties agree to enter in negotiations concerning such changes upon receipt of a written request detailing the proposed changes and specifying the reasons for the proposed changes.

(c) The effective date of any change shall be as agreed to by the parties. The Contractor agrees that throughout the life of this contract the rates so negotiated will not be in excess of published and unpublished rates charged to any other customer of the same class under similar terms and conditions of use and service.

(d) The failure of the parties to agree upon any change after a reasonable period of time shall be a dispute under the Disputes clause of this contract.

(e) Any changes to rates, terms, or conditions as a result of such negotiations shall be made a part of this contract by the issuance of a contract modification.

(End of clause)

52.241-9 Connection Charge.

As prescribed in 41.501(d)(3), insert a clause substantially the same as the following:

CONNECTION CHARGE (FEB 1995)

(a) *Charge.* In consideration of the Contractor furnishing and installing at its expense the new connection facilities described herein, the Government shall pay the Contractor a connection charge. The payment shall be in the form of progress payments, advance payments or as a lump sum, as agreed to by the parties and as permitted by applicable law. The total amount payable shall be either the estimated cost of \$_____ less the agreed to salvage value of \$_____, or the actual cost less the salvage value, whichever is less. As a condition precedent to final payment, the Contractor shall execute a release of any claims against the Government arising under or by the virtue of such installation.

(b) *Ownership, operation, maintenance and repair of new facilities to be provided.* The facilities to be supplied by the Contractor under this clause, notwithstanding the payment by the Government of a connection charge, shall be and remain the property of the Contractor and shall, at all times during the life of this contract or any renewals thereof, be operated, maintained, and repaired by the Contractor at its expense. All taxes and other charges in connection therewith, together with all liability arising out of the construction, operations, maintenance, or repair of such facilities, shall be the obligation of the Contractor.

(c) *Credits.* (1) The Contractor agrees to allow the Government, on each monthly bill for service furnished under this contract to the service location, a credit of _____ percent of the amount of each such bill as rendered until the accumulation of credits shall equal the amount of such connection charge, provided that the Contractor may at any time allow a credit up to 100 percent of the amount of each such bill.

(2) In the event the Contractor, before any termination of this contract but after completion of the facilities provided for in this clause, serves any customer other than the Government (regardless of whether the Government is being served simultaneously, intermittently, or not at all) by means of these facilities, the Contractor shall promptly notify the Government in writing. Unless otherwise agreed by the parties in writing at that time, the Contractor shall promptly accelerate the credits provided for under paragraph (c)(1) of this clause, up to 100 percent of each monthly bill until there is refunded the amount that reflects the Government's connection costs for that portion of the facilities used in serving others.

(3) In the event the Contractor terminates this contract, or defaults in performance, prior to full credit of any connection charge paid by the Government, the Contractor shall pay to the Government an amount equal to the uncredited balance of the connection charge as of the date of the termination or default.

(d) *Termination before completion of facilities.* The Government reserves the right to terminate this contract at any time before completion of the facilities with respect to which the Government is to pay a connection charge. In the event the Government exercises this right, the Contractor shall be paid the cost of any work accomplished, including direct and indirect costs reasonably allocable to the completed work prior to the time of termination by the Government, plus the cost of removal, less the salvage value.

(e) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government has paid a connection charge, but before the crediting in full by the Contractor of any connection charge in accordance with the terms of this contract, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government such facilities on condition that—

(i) If, during such _____ month period, the Contractor serves any other customer by means of such facilities, the Contractor, shall, in lieu of allowing credits, pay the Government during such period installments in like amount, manner, and extent as the credit provided for under paragraph (c) of this clause before such termination; and

(ii) Immediately after such _____ month period the Contractor shall promptly pay in full to the Government the uncredited balance of the connection charge.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

(End of clause)

Alternate 1 (Feb 1995). If the Contracting Officer determines that a nonrefundable charge is to be paid and no credits are due the Government, delete paragraphs (c) and (e), renumber paragraph (d) as (c) and add the following as paragraph (d):

(d) *Termination after completion of facilities.* In the event the Government terminates this contract after completion of the facilities with respect to which the Government is to pay a connection charge, the Contractor shall have the following options:

(1) To retain in place for _____ months after the notice of termination by the Government. If the Contractor and the Government have not agreed on terms for retention in place beyond _____ months, then the Contractor must remove the facilities pursuant to the terms of paragraph (d)(2) of this clause.

(2) To remove such facilities at the Contractor's own expense within _____ months after the effective date of the termination by the Government. If the Contractor elects to remove such facilities, the Government shall then have the option of purchasing such facilities at the agreed salvage value set forth herein; and provided further, that the Contractor shall, at the direction of the Government, leave in place such facilities located on Government property which the Government elects to purchase at the agreed salvage value.

52.241-10 Termination Liability.

As prescribed in 41.501(d)(4), insert a clause substantially the same as the following:

TERMINATION LIABILITY (FEB 1995)

(a) If the Government discontinues utility service under this contract before completion of the facilities cost recovery period specified in paragraph (b) of this clause, in consideration of the Contractor furnishing and installing at its expense, the new facility described herein, the Government shall pay termination charges, calculated as set forth in this clause.

(b) *Facility cost recovery period.* The period of time, not exceeding the term of this contract, during which the net cost of the new facility shall be recovered by the Contractor is _____ months. [Insert negotiated duration.]

(c) *Net facility cost.* The cost of the new facility, less the agreed upon salvage value of such facility, is \$_____. [Insert appropriate dollar amount.]

(d) *Monthly facility cost recovery rate.* The monthly facility cost recovery rate which the Government shall pay the Contractor whether or not service is received is \$_____. [Divide the net facility cost in paragraph (c) of this clause by the facility's cost recovery period in paragraph (b) of this clause and insert the resultant figure.]

(e) *Termination charges.* Termination charges = \$_____. [Multiply the remaining months of the facility's cost recovery period specified in paragraph (b) of this clause by the monthly facility cost recovery rate in paragraph (d) of this clause and insert the resultant figure.]

(f) If the Contractor has recovered its capital costs at the time of termination there will be no termination liability charge.

(End of clause)

52.241-11 Multiple Service Locations.

As prescribed in 41.501(d)(5), insert a clause substantially the same as the following:

MULTIPLE SERVICE LOCATIONS (FEB 1995)

(a) At any time by written order, the Contracting Officer may designate any location within the service area of the Contractor at which utility service shall commence or be discon-

tinued. Any changes to the service specifications shall be made a part of the contract by the issuance of a contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

52.241-12 Nonrefundable, Nonrecurring Service Charge.

As prescribed in 41.501(d)(6), insert a clause substantially the same as the following:

NONREFUNDABLE, NONRECURRING SERVICE CHARGE
(FEB 1995)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for _____ in the amount of \$_____ dollars payable [*specify dates or schedules*].

(End of clause)

52.241-13 Capital Credits.

As prescribed in 41.501(d)(7), insert a clause substantially the same as the following:

CAPITAL CREDITS (FEB 1995)

(a) The Government is a member of the _____ [*insert cooperative name*], and as any other member, is entitled to capital credits consistent with the bylaws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) The Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, on an _____ basis [*insert period of time*] a list of accrued credits by contract number, year, and delivery point.

(c) Payment of capital credits will be made by check, payable to the _____ [*insert agency name*], and forwarded to the Contracting Officer at _____ [*insert agency address*], unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last con-

tract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

52.242-1 Notice of Intent to Disallow Costs.

As prescribed in 42.802, insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under paragraph (a)(1) of this clause, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

52.242-2 Production Progress Reports.

As prescribed in 42.1107(a), insert the following clause:

PRODUCTION PROGRESS REPORTS (APR 1991)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding \$25,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)

52.242-3 Penalties for Unallowable Costs.

As prescribed in 42.709-6, use the following clause:

PENALTIES FOR UNALLOWABLE COSTS (MAY 2001)

(a) *Definition.* "Proposal," as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties.

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in Subpart 2.1 of the MMAR, or an executive agency supplement to the MMAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the MMAR that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of the Disputes Clause, 52.233-1.

(g) Pursuant to the criteria in MMAR 42.709-5, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

52.242-4 Certification of Final Indirect Costs.

As prescribed in 42.703-2(f), insert the following clause:

CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Materials Management Acquisition Regulation (MMAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the MMAR or its supplements.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

52.242-5 [Reserved]

52.242-6 [Reserved]

52.242-7 [Reserved]

52.242-8 [Reserved]

52.242-9 [Reserved]

52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.

As prescribed in 42.1404-2(a), insert the following clause in solicitations and contracts when f.o.b origin shipments are to be made using Government bills of lading or prepaid postage:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR PREPAID POSTAGE (APR 1984)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal Service or a foreign postal system, as appropriate, with postage costs prepaid by the Contractor. Any direct charge for

postage costs shall be listed as a separate item on invoices for the supplies shipped. Use of agency official indicia mail by Contractors is not authorized. Quantities shall not be divided into mailable lots for the express purpose of avoiding movement by other modes of transportation.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.

As prescribed in 42.1404-2(b), insert the following clause:

F.O.B. ORIGIN—GOVERNMENT BILLS OF LADING OR
INDICIA MAIL (FEB 1993)

(a) F.o.b. origin shipments shall be made on Government bills of lading, or, if the supplies are mailable, via the U.S. Postal System, using “Penalty Permit Imprint” indicia labels.

(b) If Government bills of lading are not furnished with the contract or applicable ordering document, the Contractor shall obtain them from the Contracting Officer or designated representative.

(c) Unless otherwise directed, the Contractor shall address overseas parcel post to an ultimate DOD consignee in care of a designated Army, Air Force, or Navy (fleet) post office and not to, or in care of, a transportation officer, or other activity at a CONUS water or aerial terminal for transshipment.

(End of clause)

52.242-12 Report of Shipment (REPSHIP).

As prescribed in 42.1406-2, insert the following clause:

REPORT OF SHIPMENT (REPSHIP) (JULY 1995)

Unless otherwise directed by the Contracting Officer, the Contractor shall send a prepaid notice of shipment to the consignee transportation officer for all shipments of classified material, protected sensitive, and protected controlled material; explosives and poisons, classes A and B; radioactive materials requiring the use of a III bar label; or when a truckload/carload shipment of supplies weighing 20,000 pounds or more, or a shipment of less weight that occupies the full visible capacity of a railway car or motor vehicle, is given to any carrier (common, contract or private) for transportation to a domestic (*i.e.*, within the United States excluding Alaska or Hawaii, or if shipment originates in Alaska or Hawaii within

Alaska or Hawaii, respectively) destination (other than a port for export). The notice shall be transmitted by rapid means to be received by the consignee transportation officer at least 24 hours before the arrival of the shipment. The Government bill of lading, commercial bill of lading or letter or other document that contains all of the following shall be addressed and sent promptly to the receiving transportation officer. This document shall be prominently identified by the Contractor as being a “Report of Shipment” or “REPSHIP FOR T.O.”

(a) Message Example:

REPSHIP FOR T.O. 81 JUN 01
TRANSPORTATION OFFICER
DEFENSE DEPOT, MEMPHIS, TENN.
SHIPPED YOUR DEPOT 1981 JUN 1 540 CTNS MENS
COTTON TROUSERS, 30,240 LB, 1782 CUBE, VIA
XX-YY*
IN CAR NO. XX 123456**-GBL***-C98000031****
CONTRACT DLA _____ ETA*****-JUNE 5 JONES
& CO., JERSEY CITY, N.J.

* Name of rail carrier, trucker, or other carrier.

** Vehicle identification.

*** Government bill of lading.

**** If not shipped by GBL, identify lading document and state whether paid by contractor.

***** Estimated time of arrival.

(End of clause)

52.242-13 Bankruptcy.

As prescribed in 42.903, insert the following clause:

BANKRUPTCY (JULY 1995)

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 five 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 this contract.

(End of clause)

52.242-14 Suspension of Work.

As prescribed in 42.1305(a), insert the following clause in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated:

SUSPENSION OF WORK (APR 1984)

(a) The Contracting Officer may order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the work of this contract for the period of time that the Contracting Officer determines appropriate for the convenience of the Government.

(b) If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted (1) by an act of the Contracting Officer in the administration of this contract, or (2) by the Contracting Officer's failure to act within the time specified in this contract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an equitable adjustment is provided for or excluded under any other term or condition of this contract.

(c) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the contract.

(End of clause)

52.242-15 Stop-Work Order.

As prescribed in 42.1305(b), insert the following clause. The "90-day" period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. 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. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the 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 the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

Alternate 1 (Apr 1984). If this clause is inserted in a cost-reimbursement contract, substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

52.242-16 Stop-Work Order—Facilities.

As prescribed in 42.1305(c), insert the following clause. The "90-day" period stated in the clause may be reduced to less than 90 days.

STOP-WORK ORDER—FACILITIES (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the acquisition, construction, or installation work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically

identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall, at Government expense, immediately comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Termination of Work clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery completion schedule, the estimated cost, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the 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 the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) An appropriate equitable adjustment may be made in any related contract of the Contractor that provides for adjustment and is affected by any stop-work order under this clause. The Government shall not be liable to the Contractor for damages or loss of profits because of a stop-work order issued under this clause.

(End of clause)

52.242-17 Government Delay of Work.

As prescribed in 42.1305(d), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

GOVERNMENT DELAY OF WORK (APR 1984)

(a) If the performance of all or any part of the work of this contract is delayed or interrupted (1) by an act of the Contracting Officer in the administration of this contract that is not expressly or impliedly authorized by this contract, or (2) by a failure of the Contracting Officer to act within the time spec-

ified in this contract, or within a reasonable time if not specified, an adjustment (excluding profit) shall be made for any increase in the cost of performance of this contract caused by the delay or interruption and the contract shall be modified in writing accordingly. Adjustment shall also be made in the delivery or performance dates and any other contractual term or condition affected by the delay or interruption. However, no adjustment shall be made under this clause for any delay or interruption to the extent that performance would have been delayed or interrupted by any other cause, including the fault or negligence of the Contractor, or for which an adjustment is provided or excluded under any other term or condition of this contract.

(b) A claim under this clause shall not be allowed—

(1) For any costs incurred more than 20 days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved; and

(2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the delay or interruption, but not later than the day of final payment under the contract.

(End of clause)

52.243-1 Changes—Fixed-Price.

As prescribed in 43.205(a)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—FIXED PRICE (AUG 1987)

(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 under this contract, 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 assert its right to an adjustment 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 before final payment of the contract.

(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.

(End of clause)

Alternate I (Apr 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.

Alternate II (Apr 1984). If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Description of services to be performed.
- (2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).
- (3) Place of performance of the services.
- (4) 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.
- (5) Method of shipment or packing of supplies.
- (6) Place of delivery.

Alternate III (Apr 1984). If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) for paragraph (a) of the basic clause and add the following paragraph (f):

(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 the services to be performed.

(f) No services for which an additional cost or fee will be charged by the Contractor shall be furnished without the prior written authorization of the Contracting Officer.

Alternate IV (Apr 1984). If the requirement is for transportation services, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Specifications.
- (2) Work or services.
- (3) Place of origin.
- (4) Place of delivery.
- (5) Tonnage to be shipped.
- (6) Amount of Government-furnished property.

Alternate V (Apr 1984). If the requirement is for research and development and it is desired to include the clause, substitute the following paragraphs (a)(1) and (a)(3) and paragraph (b) for paragraphs (a)(1) and (a)(3) and paragraph (b) of the basic clause:

(a) ***

- (1) Drawings, designs, or specifications.

* * * * *

- (3) Place of inspection, delivery, or acceptance.

(b) If any such change causes an increase or decrease in the cost of, or time required for, performing this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in—

- (1) The contract price, the time of performance, or both; and
- (2) Other affected terms of the contract, and shall modify the contract accordingly.

52.243-2 Changes—Cost-Reimbursement.

As prescribed in 43.205(b)(1), insert the following clause. The 30-day period may be varied according to agency procedures.

CHANGES—COST-REIMBURSEMENT (AUG 1987)

(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 estimated cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the—

(1) Estimated cost, delivery or completion schedule, or both;

(2) Amount of any fixed fee; and

(3) Other affected terms and shall modify the contract accordingly.

(c) The Contractor must assert its right to an adjustment 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 before final payment of the contract.

(d) 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.

(e) Notwithstanding the terms and conditions of paragraphs (a) and (b) of this clause, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance of this contract, shall not be increased or considered to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until this modification is made, the Contractor shall not be obligated to continue performance or incur costs beyond the point established in the Limitation of Cost or Limitation of Funds clause of this contract.

(End of clause)

Alternate I (Apr 1984). If the requirement is for services and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

Alternate II (Apr 1984). If the requirement is for services and supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) 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.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

Alternate III (Apr 1984). If the requirement is for construction, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(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 the plans and specifications or instructions incorporated in the contract.

Alternate IV (Apr 1984). If a facilities contract is contemplated, substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(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 the facilities or work described in the schedule.

(e) Any related contract with the Contractor may be equitably adjusted if it provides for adjustment and is affected by a change ordered under this clause.

Alternate V (Apr 1984). If the requirement is for research and development, and it is desired to include the clause, substitute the following paragraphs (a)(1) and (a)(3) for paragraphs (a)(1) and (a)(3) of the basic clause:

(a)***

(1) Drawings, designs, or specifications.

(3) Place of inspection, delivery, or acceptance.

52.243-3 Changes—Time-and-Materials or Labor-Hours.

As prescribed in 43.205(c), insert the following clause:

CHANGES—TIME-AND-MATERIALS OR LABOR-HOURS (SEPT 2000)

(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) Description of services to be performed.

(2) Time of performance (*i.e.*, hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(4) 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.

(5) Method of shipment or packing of supplies.

(6) Place of delivery.

(7) Amount of Government-furnished property.

(b) If any change causes an increase or decrease in any hourly rate, the ceiling price, or the time required for perfor-

mance of any part of the work under this contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this contract, the Contracting Officer will make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

- (1) Ceiling price.
- (2) Hourly rates.
- (3) Delivery schedule.
- (4) Other affected terms.

(c) The Contractor shall assert its right to an adjustment 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 before final payment of the contract.

(d) Failure to agree to any adjustment will be a dispute under the Disputes clause. However, nothing in this clause excuses the Contractor from proceeding with the contract as changed.

(End of clause)

52.243-4 Changes.

As prescribed in 43.205(d), insert the following clause: The 30-day period may be varied according to agency procedures.

CHANGES (AUG 1987)

(a) The Contracting Officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the work within the general scope of the contract, including changes—

- (1) In the specifications (including drawings and designs);
- (2) In the method or manner of performance of the work;
- (3) In the Government-furnished facilities, equipment, materials, services, or site; or
- (4) Directing acceleration in the performance of the work.

(b) Any other written or oral order (which, as used in this paragraph (b), includes direction, instruction, interpretation, or determination) from the Contracting Officer that causes a change shall be treated as a change order under this clause; Provided, that the Contractor gives the Contracting Officer written notice stating—

- (1) The date, circumstances, and source of the order; and
- (2) That the Contractor regards the order as a change order.

(c) Except as provided in this clause, no order, statement, or conduct of the Contracting Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment.

(d) If any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any such order, the Contracting Officer shall make an equitable adjustment and modify the contract in writing. However, except for an adjustment based on defective specifications, no adjustment for any change under paragraph (b) of this clause shall be made for any costs incurred more than 20 days before the Contractor gives written notice as required. In the case of defective specifications for which the Government is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with the defective specifications.

(e) The Contractor must assert its right to an adjustment under this clause within 30 days after (1) receipt of a written change order under paragraph (a) of this clause or (2) the furnishing of a written notice under paragraph (b) of this clause, by submitting to the Contracting Officer a written statement describing the general nature and amount of the proposal, unless this period is extended by the Government. The statement of proposal for adjustment may be included in the notice under paragraph (b) of this clause.

(f) No proposal by the Contractor for an equitable adjustment shall be allowed if asserted after final payment under this contract.

(End of clause)

52.243-5 Changes and Changed Conditions.

As prescribed in 43.205(e), insert the following clause:

CHANGES AND CHANGED CONDITIONS (APR 1984)

(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract.

(b) The Contractor shall promptly notify the Contracting Officer, in writing, of subsurface or latent physical conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site before proceeding with the work.

(c) If changes under paragraph (a) or conditions under paragraph (b) increase or decrease the cost of, or time required for performing the work, the Contracting Officer shall make an equitable adjustment (see paragraph (d)) upon submittal of a "proposal for adjustment" (hereafter referred to as proposal) by the Contractor before final payment under the contract.

(d) The Contracting Officer shall not make an equitable adjustment under paragraph (b) unless—

- (1) The Contractor has submitted and the Contracting Officer has received the required written notice; or
- (2) The Contracting Officer waives the requirement for the written notice.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause.

(End of clause)

52.243-6 Change Order Accounting.

As prescribed in 43.205(f), the contracting officer may insert a clause, substantially the same as follows:

CHANGE ORDER ACCOUNTING (APR 1984)

The Contracting Officer may require change order accounting whenever the estimated cost of a change or series of related changes exceeds \$100,000. The Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change. The Contractor shall maintain such accounts until the parties agree to an equitable adjustment for the changes ordered by the Contracting Officer or the matter is conclusively disposed of in accordance with the Disputes clause.

(End of clause)

52.243-7 Notification of Changes.

As prescribed in 43.107, the contracting officer may insert a clause substantially the same as the following in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

NOTIFICATION OF CHANGES (APR 1984)

(a) *Definitions.* “Contracting Officer,” as used in this clause, does not include any representative of the Contracting Officer.

“Specifically Authorized Representative (SAR),” as used in this clause, means any person the Contracting Officer has so designated by written notice (a copy of which shall be provided to the Contractor) which shall refer to this paragraph and shall be issued to the designated representative before the SAR exercises such authority.

(b) *Notice.* The primary purpose of this clause is to obtain prompt reporting of Government conduct that the Contractor considers to constitute a change to this contract. Except for changes identified as such in writing and signed by the Contracting Officer, the Contractor shall notify the Administrative Contracting Officer in writing promptly, within _____

(to be negotiated) calendar days from the date that the Contractor identifies any Government conduct (including actions, inactions, and written or oral communications) that the Contractor regards as a change to the contract terms and conditions. On the basis of the most accurate information available to the Contractor, the notice shall state—

(1) The date, nature, and circumstances of the conduct regarded as a change;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in or knowledgeable about such conduct;

(3) The identification of any documents and the substance of any oral communication involved in such conduct;

(4) In the instance of alleged acceleration of scheduled performance or delivery, the basis upon which it arose;

(5) The particular elements of contract performance for which the Contractor may seek an equitable adjustment under this clause, including—

(i) What contract line items have been or may be affected by the alleged change;

(ii) What labor or materials or both have been or may be added, deleted, or wasted by the alleged change;

(iii) To the extent practicable, what delay and disruption in the manner and sequence of performance and effect on continued performance have been or may be caused by the alleged change;

(iv) What adjustments to contract price, delivery schedule, and other provisions affected by the alleged change are estimated; and

(6) The Contractor’s estimate of the time by which the Government must respond to the Contractor’s notice to minimize cost, delay or disruption of performance.

(c) *Continued performance.* Following submission of the notice required by paragraph (b) of this clause, the Contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the Contractor, unless the notice reports a direction of the Contracting Officer or a communication from a SAR of the Contracting Officer, in either of which events the Contractor shall continue performance; provided, however, that if the Contractor regards the direction or communication as a change as described in paragraph (b) of this clause, notice shall be given in the manner provided. All directions, communications, interpretations, orders and similar actions of the SAR shall be reduced to writing promptly and copies furnished to the Contractor and to the Contracting Officer. The Contracting Officer shall promptly countermand any action which exceeds the authority of the SAR.

(d) *Government response.* The Contracting Officer shall promptly, within _____ (to be negotiated) calendar days after receipt of notice, respond to the notice in writing. In responding, the Contracting Officer shall either—

(1) Confirm that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance;

(2) Countermand any communication regarded as a change;

(3) Deny that the conduct of which the Contractor gave notice constitutes a change and when necessary direct the mode of further performance; or

(4) In the event the Contractor's notice information is inadequate to make a decision under paragraphs (d)(1), (2), or (3) of this clause, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(e) *Equitable adjustments.* (1) If the Contracting Officer confirms that Government conduct effected a change as alleged by the Contractor, and the conduct causes an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the work under this contract, whether changed or not changed by such conduct, an equitable adjustment shall be made—

(i) In the contract price or delivery schedule or both; and

(ii) In such other provisions of the contract as may be affected.

(2) The contract shall be modified in writing accordingly. In the case of drawings, designs or specifications which are defective and for which the Government is responsible, the equitable adjustment shall include the cost and time extension for delay reasonably incurred by the Contractor in attempting to comply with the defective drawings, designs or specifications before the Contractor identified, or reasonably should have identified, such defect. When the cost of property made obsolete or excess as a result of a change confirmed by the Contracting Officer under this clause is included in the equitable adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of the property. The equitable adjustment shall not include increased costs or time extensions for delay resulting from the Contractor's failure to provide notice or to continue performance as provided, respectively, in paragraphs (b) and (c) of this clause.

NOTE: The phrases "contract price" and "cost" wherever they appear in the clause, may be appropriately modified to apply to cost-reimbursement or incentive contracts, or to combinations thereof.

(End of clause)

52.244-1 [Reserved]

52.244-2 Subcontracts.

As prescribed in 44.204(a)(1), insert the following clause:

SUBCONTRACTS (AUG 1998)

(a) *Definitions.* As used in this clause—

"Approved purchasing system" means a Contractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Materials Management Acquisition Regulation (MMAR).

"Consent to subcontract" means the Contracting Officer's written consent for the Contractor to enter into a particular subcontract.

"Subcontract" means any contract, as defined in MMAR Subpart 2.1, entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) This clause does not apply to subcontracts for special test equipment when the contract contains the clause at MMAR 52.245-18, Special Test Equipment.

(c) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (d) or (e) of this clause.

(d) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(e) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer's written consent before placing the following subcontracts:

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in MMAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor’s purchasing system as set forth in MMAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations

(End of clause)

Alternate I (Aug 1998). As prescribed in 44.204(a)(2)(i), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

Alternate II (Aug 1998). As prescribed in 44.204(a)(2)(ii), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

52.244-3 [Reserved]

52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND
 CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
 (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer’s written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(c), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(End of clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2002)

(a) *Definitions.* As used in this clause—

“Commercial item” has the meaning contained in the clause at 52.202-1, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to

incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(ii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a));

(iii) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793).

(iv) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (JUNE 2000) (46 U.S.C. Appx 1241) (flowdown not required for subcontracts awarded beginning May 1, 1996).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

52.245-1 Property Records.

As prescribed in 45.106(a), insert the following clause in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records:

PROPERTY RECORDS (APR 1984)

The Government shall maintain the Government's official property records in connection with Government property under this contract. The Government Property clause is hereby modified by deleting the requirement for the Contractor to maintain such records.

(End of clause)

52.245-2 Government Property (Fixed-Price Contracts).

As prescribed in 45.106(b)(1), insert the following clause:

GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)
(DEC 1989)

(a) *Government-furnished property.* (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-

furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to paragraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. However, special tooling accountable to this contract is subject to the provisions of the Special Tooling clause and is not subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities and special test equipment acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract—

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon—

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless

otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Materials Management Acquisition Regulation (MMAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the MMAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Risk of loss.* Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this clause. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) *Abandonment and restoration of Contractor's premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

Alternate I (Apr 1984). As prescribed in 45.106(b)(2), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) *Limited risk of loss.* (1) The term "Contractor's managerial personnel," as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

- (i) All or substantially all of the Contractor's business;
- (ii) All or substantially all of the Contractor's operation at any one plant or separate location at which the contract is being performed; or
- (iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in paragraphs (g)(3) and (g)(4) of this clause.

(3) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4)(i) If the Contractor fails to act as provided in subdivision (g)(3)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcon-

tract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this paragraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making such equitable adjustment.

(8) The Contractor represents that it is not including in the price and agrees it will not hereafter include in any price to the Government any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property, or shall otherwise credit the proceeds to equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss

or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

Alternate II (July 1985). As prescribed in 45.106(b)(3), substitute the following paragraphs (c) and (g) for paragraphs (c) and (g) of the basic clause:

(c) *Title in Government property.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences, or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; provided, that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this paragraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this paragraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to

discrimination under this contemplated financial assistance (title to equipment).

(g) *Limited risk of loss.* (1) The term "Contractor's managerial personnel", as used in this paragraph (g), means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operation at any one plant, laboratory, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract (or, if an educational or nonprofit organization, for expenses incidental to such loss, destruction, or damage), except as provided in paragraphs (g)(3) and (g)(4) of this clause.

(3) The contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(4)(i) If the Contractor fails to act as provided in subdivision (g)(3)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have

resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(5) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage, to the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(6) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(7) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this paragraph (g)(7) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the

Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(8) The Contractor represents that it is not including in the price, and agrees it will not hereafter include in any price to the Government, any charge or reserve for insurance (including any self-insurance fund or reserve) covering loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(9) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, the Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to or equitably reimburse the Government, as directed by the Contracting Officer.

(10) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

52.245-3 Identification of Government-Furnished Property.

As prescribed in 45.106(c), insert the following clause, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.

IDENTIFICATION OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) The Government will furnish to the Contractor the property identified in the Schedule to be incorporated or installed into the work or used in performing the contract. The listed property will be furnished f.o.b. railroad cars at the place specified in the contract Schedule or f.o.b. truck at the project site. The Contractor is required to accept delivery, pay any demurrage or detention charges, and unload and transport the property to the job site at its own expense. When the property is delivered, the Contractor shall verify its quantity and condition and acknowledge receipt in writing to the Contracting Officer. The Contractor shall also report in writing to the

Contracting Officer within 24 hours of delivery any damage to or shortage of the property as received. All such property shall be installed or incorporated into the work at the expense of the Contractor, unless otherwise indicated in this contract.

(b) Each item of property to be furnished under this clause shall be identified in the Schedule by quantity, item, and description.

(End of clause)

52.245-4 Government-Furnished Property (Short Form).

As prescribed in 45.106(d), insert the following clause:

GOVERNMENT-FURNISHED PROPERTY (SHORT FORM)
(APR 1984)

(a) The Government shall deliver to the Contractor, at the time and locations stated in this contract, the Government-furnished property described in the Schedule or specifications. If that property, suitable for its intended use, is not delivered to the Contractor, the Contracting Officer shall equitably adjust affected provisions of this contract in accordance with the Changes clause when—

(1) The Contractor submits a timely written request for an equitable adjustment; and

(2) The facts warrant an equitable adjustment.

(b) Title to Government-furnished property shall remain in the Government. The Contractor shall use the Government-furnished property only in connection with this contract. The Contractor shall maintain adequate property control records in accordance with sound industrial practice and will make such records available for Government inspection at all reasonable times, unless the clause at Materials Management Acquisition Regulation 52.245-1, Property Records, is included in this contract.

(c) Upon delivery of Government-furnished property to the Contractor, the Contractor assumes the risk and responsibility for its loss or damage, except—

(1) For reasonable wear and tear;

(2) To the extent property is consumed in performing this contract; or

(3) As otherwise provided for by the provisions of this contract.

(d) Upon completing this contract, the Contractor shall follow the instructions of the Contracting Officer regarding the disposition of all Government-furnished property not consumed in performing this contract or previously delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property, as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as directed by the Contracting Officer.

(e) If this contract is to be performed outside the United States of America, its territories, or possessions, the words

“Government” and “Government-furnished” (wherever they appear in this clause) shall be construed as “United States Government” and “United States Government-furnished,” respectively.

(End of clause)

52.245-5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

As prescribed in 45.106(f)(1), insert the following clause:

GOVERNMENT PROPERTY (COST-REIMBURSEMENT, TIME-
AND-MATERIAL, OR LABOR-HOUR CONTRACTS)
(JAN 1986)

(a) *Government-furnished property.* (1) The term “Contractor’s managerial personnel,” as used in paragraph (g) of this clause, means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(i) All or substantially all of the Contractor’s business;

(ii) All or substantially all of the Contractor’s operation at any one plant, or separate location at which the contract is being performed; or

(iii) A separate and complete major industrial operation connected with performing this contract.

(2) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications, together with such related data and information as the Contractor may request and as may be reasonably required for the intended use of the property (hereinafter referred to as “Government-furnished property”).

(3) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract’s delivery or performance dates.

(4) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either effect repairs or modification or return or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this clause.

(5) If Government-furnished property is not delivered to the Contractor by the required time or times, the Contracting Officer shall, upon the Contractor’s timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(b) *Changes in Government-furnished property.* (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract or (ii) substitute other Government-furnished property for the property to be provided by the Government or to be acquired by the Contractor for the Government under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by this notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this clause, if the Government has agreed in the Schedule to make such property available for performing this contract and there is any—

(i) Decrease or substitution in this property pursuant to paragraph (b)(1) of this clause; or

(ii) Withdrawal of authority to use property, if provided under any other contract or lease.

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(3) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property for use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(d) *Use of Government property.* The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) *Property administration.* (1) The Contractor shall be responsible and accountable for all Government property provided under the contract and shall comply with Materials Management Acquisition Regulation (MMAR) Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound business practice and the applicable provisions of MMAR Subpart 45.5.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this clause.

(f) *Access.* The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) *Limited risk of loss.* (1) The Contractor shall not be liable for loss or destruction of, or damage to, the Government property provided under this contract or for expenses incidental to such loss, destruction, or damage, except as provided in paragraphs (g)(2) and (g)(3) of this clause.

(2) The Contractor shall be responsible for loss or destruction of, or damage to, the Government property provided under this contract (including expenses incidental to such loss, destruction, or damage)—

(i) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained or to the extent of insurance actually purchased and maintained, whichever is greater;

(ii) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;

(iii) For which the Contractor is otherwise responsible under the express terms of this contract;

(iv) That results from willful misconduct or lack of good faith on the part of the Contractor's managerial personnel; or

(v) That results from a failure on the part of the Contractor, due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel, to establish and administer a program or system for the control, use, protection, preservation, maintenance, and repair of Government property as required by paragraph (e) of this clause.

(3)(i) If the Contractor fails to act as provided by subdivision (g)(2)(v) of this clause, after being notified (by certified mail addressed to one of the Contractor's managerial personnel) of the Government's disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall

be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(ii) In such event, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(A) Did not result from the Contractor's failure to maintain an approved program or system; or

(B) Occurred while an approved program or system was maintained by the Contractor.

(4) If the Contractor transfers Government property to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the property as set forth above. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the property while in the subcontractor's possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all Government property in as good condition as when received, except for reasonable wear and tear or for its use in accordance with the provisions of the prime contract.

(5) Upon loss or destruction of, or damage to, Government property provided under this contract, the Contractor shall so notify the Contracting Officer and shall communicate with the loss and salvage organization, if any, designated by the Contracting Officer. With the assistance of any such organization, the Contractor shall take all reasonable action to protect the Government property from further damage, separate the damaged and undamaged Government property, put all the affected Government property in the best possible order, and furnish to the Contracting Officer a statement of—

(i) The lost, destroyed, or damaged Government property;

(ii) The time and origin of the loss, destruction, or damage;

(iii) All known interests in commingled property of which the Government property is a part; and

(iv) The insurance, if any, covering any part of or interest in such commingled property.

(6) The Contractor shall repair, renovate, and take such other action with respect to damaged Government property as the Contracting Officer directs. If the Government property is destroyed or damaged beyond practical repair, or is damaged and so commingled or combined with property of others (including the Contractor's) that separation is impractical, the Contractor may, with the approval of and subject to any conditions imposed by the Contracting Officer, sell such property

for the account of the Government. Such sales may be made in order to minimize the loss to the Government, to permit the resumption of business, or to accomplish a similar purpose. The Contractor shall be entitled to an equitable adjustment in the contract price for the expenditures made in performing the obligations under this paragraph (g)(6) in accordance with paragraph (h) of this clause. However, the Government may directly reimburse the loss and salvage organization for any of their charges. The Contracting Officer shall give due regard to the Contractor's liability under this paragraph (g) when making any such equitable adjustment.

(7) The Contractor shall not be reimbursed for, and shall not include as an item of overhead, the cost of insurance or of any reserve covering risk of loss or destruction of, or damage to, Government property, except to the extent that the Government may have expressly required the Contractor to carry such insurance under another provision of this contract.

(8) In the event the Contractor is reimbursed or otherwise compensated for any loss or destruction of, or damage to, Government property, the Contractor shall use the proceeds to repair, renovate, or replace the lost, destroyed, or damaged Government property or shall otherwise credit the proceeds to, or equitably reimburse, the Government, as directed by the Contracting Officer.

(9) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss or destruction of, or damage to, Government property. Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery. In addition, where a subcontractor has not been relieved from liability for any loss or destruction of, or damage to, Government property, the Contractor shall enforce for the benefit of the Government the liability of the subcontractor for such loss, destruction, or damage.

(h) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished property;

(2) Delivery of Government-furnished property in a condition not suitable for its intended use;

(3) A decrease in or substitution of Government-furnished property; or

(4) Failure to repair or replace Government property for which the Government is responsible.

(i) *Final accounting and disposition of Government property.* Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the cost of the work covered by this contract or paid to the Government as directed by the Contracting Officer. The foregoing provisions shall apply to scrap from Government property; provided, however, that the Contracting Officer may authorize or direct the Contractor to omit from such inventory schedules any scrap consisting of faulty castings or forgings or of cutting and processing waste, such as chips, cuttings, borings, turnings, short ends, circles, trimmings, clippings, and remnants, and to dispose of such scrap in accordance with the Contractor's normal practice and account for it as a part of general overhead or other reimbursable costs in accordance with the Contractor's established accounting procedures.

(j) *Abandonment and restoration of Contractor premises.* Unless otherwise provided herein, the Government—

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (*e.g.*, abandonment, disposition upon completion of need, or contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

(k) *Communications.* All communications under this clause shall be in writing.

(l) *Overseas contracts.* If this contract is to be performed outside the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

(End of clause)

Alternate I (July 1985). As prescribed in 45.106(f)(2)), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Title.* (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), are subject to the provisions of this clause. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract and that, under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon the vendor's delivery of such property. Title to all other property, the cost of which is to be reimbursed to the Contractor under this contract and that under the provisions of this contract is to vest in the Government, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in contract performance;

(ii) Commencement of processing of the property or its use in contract performance; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to equipment (and other tangible personal property) purchased with funds available for research and having an acquisition cost of less than \$5,000 shall vest in the Contractor upon acquisition or as soon thereafter as feasible; provided, that the Contractor obtained the Contracting Officer's approval before each acquisition. Title to equipment purchased with funds available for research and having an acquisition cost of \$5,000 or more shall vest as set forth in the contract. If title to equipment vests in the Contractor under this paragraph (c)(4), the Contractor agrees that no charge will be made to the Government for any depreciation, amortization, or use under any existing or future Government contract or subcontract thereunder. The Contractor shall furnish the Contracting Officer a list of all equipment to which title is vested in the Contractor under this paragraph (c)(4) within 10 days following the end of the calendar quarter during which it was received.

(5) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

52.245-6 Liability for Government Property (Demolition Services Contracts).

As prescribed in 45.106(g) insert the following clause, in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements:

LIABILITY FOR GOVERNMENT PROPERTY (DEMOLITION SERVICES CONTRACTS) (APR 1984)

Except for reasonable wear and tear incident to removal and delivery to the Government, the Contractor assumes the risk of and shall be responsible for any loss or destruction of, or damage to, items of property, title to which—

(a) Remains in the Government and that are to be delivered to the Government by the Contractor in performing the work; and

(b) Is vested in the Contractor but that under the Termination clauses of this contract is revested in the Government upon notice of termination.

(End of clause)

52.245-7 Government Property (Consolidated Facilities).

As prescribed in 45.302-6(a), insert the following clause in solicitations and contracts when a consolidated facilities contract is contemplated:

GOVERNMENT PROPERTY (CONSOLIDATED FACILITIES)
(MAR 1996)

(a) *Definitions.* For the purpose of this contract, the following definitions apply:

“Facilities,” as used in this clause, means all property provided under this facilities contract.

“Related contract,” as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those facilities as is described in the Schedule.

(3) All shipments of the facilities shall be made on Government bills of lading, unless otherwise authorized by the Contracting Officer. The required number of such Government bills of lading will be furnished to the Contractor by, and the Contractor shall be accountable therefor to, the transportation activity designated by the Contracting Officer.

(c) *Period of this contract.* If not otherwise specified in the contract and if not previously terminated under paragraph (m), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract

beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(d) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to replacement parts furnished by the Contractor in carrying out its normal maintenance obligations under paragraph (h) shall pass to and vest in the Government upon completion of their installation in the facilities.

(4) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(5) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(6) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(7) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(e) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting

Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(f) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(g) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities, in accordance with the provisions of Materials Management Acquisition Regulation (MMAR) Subpart 45.5 in effect on the date of this contract. The provisions of MMAR 45.5 are hereby incorporated by reference and made a part of this contract.

(h) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall perform normal maintenance of the facilities in accordance with sound industrial practice, including protection, preservation, and repair of the facilities and normal parts replacement for equipment.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show its adequacy. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (h)(1) and (h)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (h)(1) through (h)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect these records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if the Contracting Officer directs, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of; until the expiration of the 120-day period stated in paragraph (n)(4) of this clause; and until the Contractor has discharged its other obligations under this contract with respect to such items.

(i) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(j) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at MMAR 52.228-7, Insurance—Liability to Third Persons. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(k) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by any nondelivery, delay, diversion, or substitution under this paragraph (k).

(l) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs

or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(m) *Termination of the use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (m) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(n) *Disposition of the facilities.* (1) The provisions of this paragraph (n) shall apply to facilities for which use has been terminated by either the Contracting Officer or the Contractor under paragraph (m), except as provided in paragraph (n)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph shall not apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (m), or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer, in a form satisfactory to the Contracting Officer, an accounting for all the facilities covered by the notice.

(4) Within 120 days after the Contractor accounts for any facilities under paragraph (n)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in paragraph (n)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the restoration or rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; provided, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real

property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by paragraph (n)(4) within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse, in accordance with sound practice and in a manner compatible with their security classification. Except as provided in this paragraph, the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (n)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (n)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in paragraph (n)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring that Government property (to the extent that it is affected by the installation of the Contractor's property) to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (n)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(End of clause)

52.245-8 Liability for the Facilities.

As prescribed in 45.302-6(b), insert the following clause:

LIABILITY FOR THE FACILITIES (JAN 1997)

(a) The term “Contractor’s managerial personnel,” as used in this clause, means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor’s business;
- (2) All or substantially all of the Contractor’s operations at any one plant or separate location in which the facilities are installed or located; or
- (3) A separate and complete major industrial operation in connection with which the facilities are used.

(b) The Contractor shall not be liable for any loss or destruction of, or damage to, the facilities or for expenses incidental to such loss, destruction, or damage, except as provided in this clause.

(c) The Contractor shall be liable for loss or destruction of, or damage to, the facilities, and for expenses incidental to such loss, destruction, or damage—

- (1) That results from a risk expressly required to be insured under this contract, but only to the extent of the insurance required to be purchased and maintained, or to the extent of insurance actually purchased and maintained, whichever is greater;
- (2) That results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but only to the extent of such insurance or reimbursement;
- (3) For which the Contractor is otherwise responsible under the express terms of this contract;
- (4) That results from willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel; or
- (5) That results from a failure, due to willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel—

(i) To establish, maintain, and administer a system for control of the facilities in accordance with the “Property administration” paragraph of the Government Property clause; or

(ii) To maintain and administer a program for maintenance, repair, protection, and preservation of the facilities, in accordance with the “Property administration” paragraph of the Government Property clause, or to take reasonable steps to comply with any appropriate written direction that the Contracting Officer may prescribe as reasonably necessary for the protection of the facilities. If the Government Property clause does not include the “Property administration” paragraph, then the Contractor shall exercise sound industrial practice in complying with the requirements of this subdivision (c)(5)(ii).

(d)(1) If the Contractor fails to act as provided by paragraph (c)(5) of this clause, after being notified (by certified mail addressed to one of the Contractor’s managerial personnel) of the Government’s disapproval, withdrawal of approval, or nonacceptance of the system or program, it shall be conclusively presumed that such failure was due to willful misconduct or lack of good faith on the part of the Contractor’s managerial personnel.

(2) Furthermore, any loss or destruction of, or damage to, the Government property shall be presumed to have resulted from such failure unless the Contractor can establish by clear and convincing evidence that such loss, destruction, or damage—

(i) Did not result from the Contractor’s failure to maintain an approved program or system; or

(ii) Occurred while an approved program or system was maintained by the Contractor.

(e) If the Contractor transfers facilities to the possession and control of a subcontractor, the transfer shall not affect the liability of the Contractor for loss or destruction of, or damage to, the facilities. However, the Contractor shall require the subcontractor to assume the risk of, and be responsible for, any loss or destruction of, or damage to, the facilities while in the subcontractor’s possession or control, except to the extent that the subcontract, with the advance approval of the Contracting Officer, relieves the subcontractor from such liability. In the absence of such approval, the subcontract shall contain appropriate provisions requiring the return of all the facilities in as good condition as when received, except for reasonable wear and tear or for their utilization in accordance with the provisions of the prime contract.

(f) Unless expressly directed in writing by the Contracting Officer, the Contractor shall not include in the price or cost under any contract with the Government the cost of insurance (including self-insurance) against any form of loss, destruction, or damage to the facilities. Any insurance required under this clause shall be in such form, in such amounts, for such periods of time, and with such insurers (including the Contractor as self-insurer in appropriate circumstances) as the Contracting Officer shall require or approve. Such insurance shall provide for 30 days advance notice to the Contracting Officer, in the event of cancellation or material change in the policy coverage on the part of the insurer. Documentation of insurance or an authenticated copy of such insurance shall be deposited promptly with the Contracting Officer. The Contractor shall, not less than 30 days before the expiration of such insurance, deliver to the Contracting Officer documentation of insurance or an authenticated copy of each renewal policy. The insurance shall be in the name of the United States of America (Agency Name), the Contractor, and such other interested parties as the Contracting Officer shall approve, and shall contain a loss payable clause reading substantially as follows:

Any loss under this policy shall be adjusted with (Contractor) and the proceeds, at the direction of the Government, shall be paid to (Contractor). Proceeds not paid to (Contractor) shall be paid to the office designated by the Contracting Officer.

(g) When there is any loss or destruction of, or damage to, the facilities—

(1) The Contractor shall promptly notify the Contracting Officer and, with the assistance of the Contracting Officer, shall take all reasonable steps to protect the facilities from further damage, separate the damaged and undamaged facilities, put all the facilities in the best possible order, and promptly furnish to the Contracting Officer (and in any event within 30 days) a statement of—

- (i) The facilities lost or damaged;
- (ii) The time and origin of the loss or damage;
- (iii) All known interests in commingled property of which the facilities are a part; and

(iv) Any insurance covering any part of or interest in such commingled property;

(2) The Contractor shall make such repairs, replacements and renovations of the lost, destroyed, or damaged facilities, or take such other action as the Contracting Officer may direct in writing; and

(3) The Contractor shall perform its obligations under this paragraph (g) at Government expense, except to the extent that the Contractor is liable for such damage, destruction, or loss under the terms of this clause, and except as any damage, destruction, or loss is compensated by insurance.

(h) The Government is not obliged to replace or repair the facilities that have been lost, destroyed, or damaged. If the Government does not replace or repair the facilities, the right of the parties to an equitable adjustment in delivery or performance dates, price, or both, and in any other contractual condition of the related contracts affected shall be governed by the terms and conditions of those contracts.

(i) Except to the extent of any loss or destruction of, or damage to, the facilities for which the Contractor is relieved of liability, the facilities shall be returned to the Government or otherwise disposed of under the terms of this contract—

- (1) In as good condition as when received by the Contractor;
- (2) Improved; or
- (3) As required under the terms of this contract, less ordinary wear and tear.

(j) If the Contractor is in any way compensated (excepting proceeds from use and occupancy insurance, the cost of which is not borne directly or indirectly by the Government) for any loss or destruction of, or damage to, the facilities, the Contractor, as directed by the Contracting Officer, shall—

- (1) Use the proceeds to repair, renovate, or replace the facilities involved; or
- (2) Pay such proceeds to the Government.

(k) The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any loss or destruction of, or damage to, the facilities. Upon the request of the Contracting Officer, the Contractor shall furnish to the Government, at Government expense, all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

(End of clause)

52.245-9 Use and Charges.

As prescribed in 45.302-6(c), insert the following clause in solicitations and contracts (1) when a consolidated facilities contract or a facilities use contract or (2) when a fixed-price contract is contemplated, and Government production and research property is provided other than on a rent-free basis. If the conditions specified in 45.403(a) apply, the contracting officer shall modify the clause, as appropriate.

USE AND CHARGES (APR 1984)

(a) The Contractor may use the facilities without charge in the performance of—

- (1) Contracts with the Government that specifically authorize such use without charge;
- (2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—
 - (i) Approves a subcontract specifically authorizing such use; or
 - (ii) Otherwise authorizes such use in writing; and
- (3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(b) If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the facilities for a rental fee for work other than that provided in paragraph (a). Authorizing such use of the facilities does not waive any rights of the Government to terminate the Contractor's right to use the facilities. The rental fee shall be determined in accordance with the following paragraphs.

(c) The following bases are or shall be established in writing for the rental computation prescribed in paragraphs (d) and (e) of this clause in advance of any use of the facilities on a rental basis:

- (1) The rental rates shall be those set forth in Table I.
- (2) The acquisition cost of the facilities shall be the total cost to the Government, as determined by the Contracting Officer, and includes the cost of transportation and installation, if borne by the Government.

(i) When Government-owned special tooling or accessories are rented with any of the facilities, the acquisition cost of the facilities shall be increased by the total cost to

the Government of such tooling or accessories, as determined by the Contracting Officer.

(ii) When any of the facilities are substantially improved at Government expense, the acquisition cost of the facilities shall be increased by the increase in value that the improvement represents, as determined by the Contracting Officer.

(iii) The determinations of the Contracting Officer under this paragraph (c)(2) shall be final.

(3) For the purpose of determining the amount of rental due under paragraph (d), the rental period shall be not less than 1 month nor more than 6 months, as approved by the Contracting Officer.

(4) For the purpose of computing any credit under paragraph (e), the unit in determining the amount of use of the facilities shall be direct labor hours, sales, hours of use, or any other unit of measure that will result in an equitable apportionment of the rental charge, as approved by the Contracting Officer.

(d) The Contractor shall compute the amount of rentals to be paid for each rental period by applying the appropriate rental rates to the acquisition cost of such facilities as may have been authorized for use in advance for the rental period.

(e) The full rental charge for each period shall be reduced by a credit. The credit equals the rental amount that would otherwise be properly allocable to the work for which the facilities were used without charge under paragraph (a). The credit shall be computed by multiplying the full rental for the rental period by a fraction in which the numerator is the amount of use of the facilities by the Contractor without charge during the period, and the denominator is the total amount of use of the facilities by the Contractor during the period.

(f) Within 90 days after the close of each rental period, the Contractor shall submit to the Contracting Officer a written statement of the use made of the facilities by the Contractor and the rental due the Government. At the same time, the Contractor shall make available such records and data as are deter-

mined by the Contracting Officer to be necessary to verify the information contained in the statement.

(g) If the Contractor fails to submit the information as required in paragraph (f) of this clause, the Contractor shall be liable for the full rental for the period. However, if the Contractor's failure to submit was not the fault of the Contractor, the Contracting Officer shall grant to the Contractor in writing a reasonable extension of time to submit.

(h) Unless otherwise directed in writing by the Contracting Officer, the Contractor shall give priority in the use of the facilities to performing contracts and subcontracts of the Contracting Officer having cognizance of the facilities and shall not undertake any work involving the use of the facilities that would interfere with performing existing Government contracts or subcontracts.

(i) Concurrently with the submission of the written statement prescribed by paragraph (f) of this clause, the Contractor shall pay the rental due the Government under this clause. Payment shall be by check made payable to the office designated for contract administration and mailed or delivered to the Contracting Officer. Receipt and acceptance by the Government of the Contractor's check pursuant to this paragraph shall constitute an accord and satisfaction of the final amount due the Government hereunder, unless the Contractor is notified in writing within 180 days following receipt that the amount received is not regarded by the Government as the final amount due.

(j) If the Contractor uses any item of the facilities without authorization, the Contractor shall be liable for the full monthly rental, without credit, for such item for each month or part of a month in which such unauthorized use occurs; provided, however, that the agency head concerned may, in writing, waive the Contractor's liability for such unauthorized use if the agency head determines that without such a waiver gross inequity would result. The acceptance of any rental by the Government under this clause shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor growing out of the Contractor's unauthorized use

of the facilities or any other failure to perform this contract according to its terms.

TABLE I—RENTAL RATES

- (i) For real property and associated fixtures, a fair and reasonable rental shall be established, based on sound commercial practice.
- (ii) For plant equipment of the types covered in Federal Supply classes 3405, 3408, 3410, and 3411 through 3419, machine tools; and in 3441 through 3449, secondary metal forming and cutting machines, the following monthly rates shall apply:

<u>Age of Equipment</u>	<u>Monthly Rental Rate</u>
Under 2 years old	3.0 percent
Over 2 to 3 years old	2.0 percent
Over 3 to 6 years old	1.05 percent
Over 6 to 10 years old	1.00 percent
Over 10 years old	0.75 percent

The age of each item of the equipment shall be based on the year in which it was manufactured, with a birthday on January 1 of each year thereafter. For example, an item of equipment manufactured on July 15, 1978, will be considered to be “over 1 year old” on and after January 1, 1979, and “over 2 years old” on and after January 1, 1980.

- (iii) For personal property and equipment not covered in (i) or (ii) of this Table, a rental shall be established at not less than the prevailing commercial rate, if any, or, in the absence of such rate, not less than 2 percent per month for electronic test equipment and automotive equipment and not less than 1 percent per month for all other property and equipment.

(End of clause)

52.245-10 Government Property (Facilities Acquisition).

As prescribed in 45.302-6(d), insert the following clause in solicitations and contracts when a facilities acquisition contract is contemplated:

GOVERNMENT PROPERTY (FACILITIES ACQUISITION)
(MAR 1996)

(a) *Definitions.*

“Facilities,” as used in this clause, means all property provided under this facilities contract.

“Related contract,” as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Facilities to be provided.* (1) The Contractor, at Government expense and subject to the provisions of this contract, shall acquire, construct, or install the facilities and perform the related work as described in the Schedule.

(2) The Government, subject to the provisions of this contract, shall furnish to the Contractor the facilities identified in the Schedule as Government-furnished facilities. The Contractor, at Government expense, shall perform the work with respect to those Government-furnished facilities as is described in the Schedule.

(c) *Title in the facilities.* (1) The Government shall retain title to all Government-furnished property.

(2) Title to all facilities and components shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this contract.

(3) Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in the Government upon—

(i) Issuance of the property for use in performing this contract;

(ii) Commencement of processing or use of the property in performing this contract; or

(iii) Reimbursement of the cost of the property by the Government, whichever occurs first.

(4) Title to the facilities shall not be affected by their incorporation into, or attachment to, any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(5) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(6) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property, that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Property control.* The Contractor shall maintain property control procedures and records and a system of identification of the facilities in accordance with the provisions of Materials Management Acquisition Regulation (MMAR)

Subpart 45.5 in effect on the date of this contract. The provisions of MMAR 45.5 are hereby incorporated by reference and made a part of this contract.

(e) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(f) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities, except as specified in the clause at MMAR 52.228-7, Insurance—Liability to Third Persons. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under such related contracts.

(g) *Late delivery, diversion, and substitution.* (1) The Government shall not be liable for breach of contract for any delay in delivery or nondelivery of facilities to be furnished under this contract.

(2) The Government has the right, at its expense, to divert the facilities under this contract by directing the Contractor to—

(i) Deliver any of the facilities to locations other than those specified in the Schedule; or

(ii) Assign purchase orders or subcontracts for any of the facilities to the Government or third parties.

(3) The Government may furnish any facilities instead of having the Contractor acquire or construct them. In such event, the Contractor is entitled to reimbursement for the cost related to the acquisition or construction of the facilities, including the cost of terminating purchase orders and subcontracts.

(4) Appropriate equitable adjustment may be made in any related contract that so provides and that is affected by nondelivery, delay, diversion, or substitution under this paragraph (g).

(h) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(i) *Supersedure.* Upon acquisition, construction, or installation of the facilities called for by this contract, or any usable increment of the facilities, and acceptance by the Government, the facilities shall then be subject to the provisions of the facilities contract that authorizes the use of the items.

(End of clause)

52.245-11 Government Property (Facilities Use).

As prescribed in 45.302-6(e)(1), insert the following clause:

GOVERNMENT PROPERTY (FACILITIES USE (APR 1984))

(a) *Definitions.*

“Facilities,” as used in this clause, means property provided under this facilities contract.

“Related contract,” as used in this clause, means a Government contract or subcontract for supplies or services under which the use of the facilities is or may be authorized.

(b) *Period of this contract.* If not otherwise specified in this contract and if not previously terminated under paragraph (k), the use of the facilities authorized under this contract shall terminate 5 years after its effective date. Thereafter, if continued use of the facilities by the Contractor is mutually desired, the parties shall enter into a new contract that shall incorporate such provisions as may then be required by applicable laws and regulations. The parties may, by written agreement, extend the use of the facilities under this contract beyond this 5-year period to permit the completion of any then-existing related contracts and subcontracts.

(c) *Title in the facilities.* (1) Title to the facilities shall remain in the Government. Title to parts replaced by the Contractor in carrying out its normal maintenance obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(2) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(3) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(4) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement or structural alterations, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(d) *Location of the facilities.* The Contractor may use the facilities at any of the locations specified in the Schedule and, with the prior written approval of the Contracting Officer, at any other location. In granting this approval, the Contracting Officer may prescribe such terms and conditions as may be deemed necessary for protecting the Government's interest in the facilities involved. Those terms and conditions shall take precedence over any conflicting provisions of this contract.

(e) *Notice of use of the facilities.* The Contractor shall notify the Contracting Officer in writing—

(1) Whenever use of all facilities for Government work in any quarterly period averages less than 75 percent of the total use of the facilities; or

(2) Whenever any item of the facilities is no longer needed or usable for performing existing related contracts that authorize such use.

(f) *Property control.* The Contractor shall maintain property control procedures and records, and a system of identification of the facilities, in accordance with the provisions of Materials Management Acquisition Regulation (MMAR) Subpart 45.5 in effect on the date of this contract. The provisions of MMAR 45.5 are hereby incorporated by reference and made a part of this contract.

(g) *Maintenance.* (1) Except as otherwise provided in the Schedule, the Contractor shall protect, preserve, maintain (including normal parts replacement), and repair the facilities in accordance with sound industrial practice.

(2) As soon as practicable after the execution of this contract, the Contractor shall submit to the Contracting Officer a written proposed maintenance program, including a maintenance records system, in sufficient detail to show the adequacy of the proposed program. If the Contracting Officer agrees to the proposed program, it shall become the normal maintenance obligation of the Contractor. The Contractor's performance according to the approved program shall satisfy the Contractor's obligations under paragraphs (g)(1) and (g)(5) of this clause.

(3) The Contracting Officer may at any time direct the Contractor in writing to reduce the work required by the normal maintenance program. If such order reduces the cost of performing the maintenance, an appropriate equitable adjustment may be made in any affected related contract that so provides.

(4) The Contractor shall perform any maintenance work directed by the Contracting Officer in writing. Work in excess of the maintenance required under paragraphs (g)(1) through (g)(3) of this clause shall be at Government expense. The Contractor shall notify the Contracting Officer in writing when sound industrial practice requires maintenance in excess of the normal maintenance program.

(5) The Contractor shall keep records of all work done on the facilities and shall give the Government reasonable opportunity to inspect such records. When facilities are disposed of under this contract, the Contractor shall deliver the related records to the Government or, if directed by the Contracting Officer, to third persons.

(6) The Contractor's obligation under this clause for each item of facilities shall continue until the item is removed, abandoned, or disposed of at the expiration of the 120-day period stated in paragraph (1)(4) of this clause and when the Contractor has discharged its other obligations under this contract with respect to such items.

(h) *Access.* The Government and any persons designated by it shall, at all reasonable times, have access to the premises where any of the facilities are located.

(i) *Indemnification of the Government.* The Contractor shall indemnify the Government and hold it harmless against claims for injury to persons or damage to property of the Contractor or others arising from the Contractor's possession or use of the facilities under this contract. However, the provisions of the Contractor's related contracts shall govern any assumption of liability by the Government for claims arising under those contracts.

(j) *Representations and warranties.* (1) The Government makes no warranty, express or implied, regarding the condition or fitness for use of any facilities. To the extent practical, the Contractor shall be allowed to inspect all the facilities to be furnished by the Government before their shipment.

(2) If the Contractor receives facilities in a condition not suitable for the intended use, the Contractor shall, within 30 days after receipt and installation thereof, so notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either (i) return such item or otherwise dispose of it or (ii) effect repairs or modifications. An appropriate equitable adjustment may be made in any related contract that so provides and that is affected by the return, disposition, repair, or modification of any facilities.

(k) *Termination of use of the facilities.* (1) The Contractor may at any time, upon written notice to the Contracting Officer, terminate its authority to use any or all of the facilities. Termination under this paragraph (k) shall not relieve the Contractor of any of its obligations or liabilities under any related contract or subcontract affected by the termination.

(2) The Contracting Officer may at any time, upon written notice, terminate or limit the Contractor's authority to use any of the facilities. Except as otherwise provided in the Failure to Perform clause of this contract, an equitable adjustment may be made in any related contract of the Contractor that so provides and that is affected by such notice.

(1) *Disposition of the facilities.* (1) The provisions of this paragraph (1) shall apply to facilities whose use has been terminated by either the Contracting Officer or the Contractor under paragraph (k), except as provided in paragraph (1)(2).

(2) Unless otherwise directed by the Contracting Officer, this paragraph (1) shall not apply to facilities terminated by the Contractor if—

(i) The facilities terminated do not comprise all of the facilities in the possession of the Contractor; and

(ii) The Contracting Officer determines that continued retention of the facilities will not interfere with the Contractor's operations.

(3) Within 60 days after the effective date of any notice of termination given under paragraph (k) or within such longer period as the Contracting Officer may approve in writing, the Contractor shall submit to the Contracting Officer an accounting for all the facilities covered by such notice. The submission of the Contractor shall be in a form satisfactory to the Contracting Officer.

(4) Within 120 days after the Contractor accounts for any facilities under paragraph (1)(3), the Contracting Officer shall give written notice to the Contractor as to the disposition of the facilities, except as otherwise provided in paragraph (1)(6). In its disposition of the facilities, the Government may either—

(i) Abandon the facilities in place, in which case all obligations of the Government regarding such abandoned facilities and the rehabilitation of the premises in and on which they are located shall immediately cease; or

(ii) Require the Contractor to comply, at Government expense, with such directions as the Contracting Officer may give with respect to—

(A) The preparation, protection, removal, or shipment of the affected facilities;

(B) The retention or storage of the affected facilities; provided, that the Contracting Officer shall not direct the Contractor to retain or store any items of facilities in or on real property not owned by the Government if such retention or storage will interfere with the Contractor's operations;

(C) The restoration of Government-owned property incident to the removal of the facilities from such property; and

(D) The sale of any affected facilities in such manner, at such times, and at such price as may be approved

by the Government, except that the Contractor shall not be required to extend credit to any purchaser.

(5) If the Contracting Officer fails to give the written notice required by paragraph (1)(4) of this clause within the prescribed 120-day period, the Contractor may, upon not less than 30 days' written notice to the Government, and at Government risk and expense, (i) retain the facilities in place or (ii) remove any of the affected severable facilities located in Contractor-owned property and store them at the Contractor's plant or in a public insured warehouse. Such removal and storage shall be in accordance with sound practice and in a manner compatible with the security classification of the facilities. Except as provided in this paragraph (1)(5), the Government shall not be liable to the Contractor for failure to give the written notice required by paragraph (1)(4).

(6) Nonseverable items of the facilities or items of the facilities subject to patent or proprietary rights shall be disposed of in such manner as the parties may have agreed to in writing.

(7) The Government, either directly or by third persons engaged by it, may remove or otherwise dispose of any facilities for which the Contractor's authority to use has been terminated, other than those for which specific provision is made in paragraph (1)(6).

(8) The Contractor shall, within a reasonable time after the expiration of the 120-day period specified in paragraph (1)(4), remove all of its property from the Government property and take such action as the Contracting Officer may direct in writing with respect to restoring such Government property, to the extent that it is affected by the installation of the Contractor's property, to its condition before such installation.

(9) Unless otherwise specifically provided in this contract, the Government shall not be obligated to the Contractor to restore or rehabilitate any property at the Contractor's plant, except for restoration or rehabilitation costs caused by removal of the facilities under subdivision (1)(4)(ii). The Contractor agrees to indemnify the Government against all suits or claims for damages arising out of the Government's failure to restore or rehabilitate any property at the Contractor's plant or property of its subcontractors, except any damage as may be caused by the negligence of the Government, its agents, or independent contractors.

(m) *Supersedure.* (1) Facilities previously provided to the Contractor under the contracts specified in the Schedule of this contract shall become subject to this contract upon its effective date. The terms of those contracts by which such facilities were previously provided to the Contractor are hereby superseded with respect to such facilities, except for rights and obligations that may have accrued under such other contract before the effective date of this contract.

(2) Facilities subsequently provided the Contractor under any contract shall, if that contract so specifies, be subject to this contract upon the completion of their construction, acquisition, and installation or upon their availability for use, whichever occurs first, except as otherwise provided in the contract or other document by which such facilities are provided to the Contractor.

(End of clause)

Alternate I (July 1985). As prescribed in 45.302-6(e)(2), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Title.* (1) Title to equipment (and other tangible personal property) having a unit acquisition cost of less than \$5,000 purchased with funds available for research shall vest in the Contractor upon acquisition or as soon thereafter as feasible, provided that the Contractor received the Contracting Officer's approval before acquiring the equipment. Title to other equipment purchased with Government funds shall vest in the Government. The Government may at any time during the term of this contract or upon its completion or termination transfer to the Contractor the title to any equipment purchased with funds available for research. Any such transfer shall be upon terms and conditions agreed to by the parties. The Contractor agrees that it shall not charge under any Government contract or subcontract any depreciation, amortization, or use of the equipment purchased or transferred under this paragraph. When title to equipment is vested in the Contractor or is transferred under this paragraph to the Contractor, the equipment ceases to be Government property. Within 10 days after the end of the calendar quarter in which such acquisition or transfer of title occurs, the Contractor shall furnish the Contracting Officer a list of all equipment, title to which is vested in the Contractor.

(2)(i) The Government shall retain title to all Government-furnished property.

(ii) Except as set forth in paragraph (c)(1), title to all property shall pass to and vest in the Government upon delivery by the vendor of all such items purchased by the Contractor for which it is entitled to be reimbursed as a direct item of cost under this or a related contract.

(iii) Title to replacement parts furnished by the Contractor in performing its normal obligations under paragraph (g) shall pass to and vest in the Government upon completion of their installation in the facilities.

(iv) Title to other property, the cost of which is reimbursable to the contractor under this contract or a related contract, shall pass to and vest in the Government upon—

(A) Issuance of the property for use in performing this contract;

(B) Commencement of processing or use of the property in performing this contract; or

(C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(3) Title to the facilities shall not be affected by their incorporation into or attachment to any property not owned by

the Government, nor shall any item of the facilities become a fixture or lose its identity as personal property by being attached to any real property. The Contractor shall keep the facilities free and clear of all liens and encumbrances and, except as otherwise authorized by this contract or by the Contracting Officer, shall not remove or otherwise part with possession of, or permit the use by others of, any of the facilities.

(4) The Contractor may, with the written approval of the Contracting Officer, install, arrange, or rearrange, on Government-furnished premises, readily movable machinery, equipment, and other items belonging to the Contractor. Title to any such item shall remain in the Contractor even though it may be attached to real property owned by the Government, unless the Contracting Officer determines that it is so permanently attached that removal would cause substantial injury to Government property.

(5) The Contractor shall not construct or install, at its own expense, any fixed improvement or structural alterations in Government buildings or other real property without advance written approval of the Contracting Officer. Fixed improvement, as used herein, means any alteration or improvement in the nature of the building or other real property that, after completion, cannot be removed without substantial loss of value or damage to the premises. The term does not include foundations for production equipment.

(6) Vesting title under this paragraph (c) is subject to civil rights legislation, 42 U.S.C. 2000d. Before title is vested and by signing this contract, the Contractor accepts and agrees that—

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this contemplated financial assistance (title to equipment).

52.245-12 Contract Purpose (Nonprofit Educational Institutions).

As prescribed in 45.302-7(a), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

CONTRACT PURPOSE (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

This facilities use contract is designed specifically for nonprofit educational institutions to set forth provisions for the use and accountability of facilities furnished or acquired under related contracts identified elsewhere herein. There are no funds provided under this contract. Costs incurred for acquisition, maintenance, repair, replacement, disposition, or other purposes in connection with the facilities accountable hereunder will be subject to the reimbursement provisions of the related contracts; provided, however, that should no other contract be available for reimbursement of such costs, this

contract may be appropriately modified to provide for such reimbursement.

(End of clause)

52.245-13 Accountable Facilities (Nonprofit Educational Institutions).

As prescribed in 45.302-7(b), the contracting officer may insert the following clause in solicitations and contracts when a facilities contract is contemplated and award may be made to a nonprofit educational institution:

ACCOUNTABLE FACILITIES (NONPROFIT EDUCATIONAL INSTITUTIONS) (APR 1984)

The facilities accountable under this contract are those facilities furnished or acquired under this contract and those facilities furnished or acquired under those related contracts that are specifically identified in this contract Schedule.

(End of clause)

52.245-14 Use of Government Facilities.

As prescribed in 45.302-7(c), the contracting officer may insert the following clause in solicitations and contracts when a facilities use contract is contemplated and award may be made to a nonprofit educational institution:

USE OF GOVERNMENT FACILITIES (APR 1984)

The Contractor may use the facilities without charge in performing—

- (a) Contracts with the Government which specifically authorize such use without charge;
- (b) Subcontracts of any tier if the Contracting Officer having cognizance of the prime contract has authorized, in writing, use without charge; and
- (c) Other work for which the Contracting Officer has specifically authorized use without charge in writing.

(End of clause)

52.245-15 [Reserved]

52.245-16 Facilities Equipment Modernization.

As prescribed in 45.302-7(e), insert the following clause:

FACILITIES EQUIPMENT MODERNIZATION (APR 1985)

(a) The Contractor agrees to return to the Government the net cost savings realized from using modernized or replacement equipment provided by the Government under this contract. This applies to using such equipment on any contracts or subcontracts that are firm-fixed price, or that are fixed-price with economic price adjustment provisions, entered into within the 3 years following the date such equipment is placed into production. This provision does not apply to the use of such equipment in sealed bid contracts entered into after the

equipment is placed in production or in contracts or subcontracts that specifically provide that they have been priced on the basis of anticipated use of such equipment.

(b)(1) The Contractor shall maintain adequate records for implementing this clause. The Contractor shall make such records available at its office for inspection, audit, or reproduction by any authorized representative of the Contracting Officer.

(2) When the Contractor authorizes a subcontractor to use the modernized or replacement equipment, the subcontractor shall be required to maintain records and make them and additional information available to the Contracting Officer.

(c) Records of equipment shall generally be acceptable if they are maintained under established accounting practices and permit a fair estimation of the net cost savings realized. Net cost savings realized shall be determined by a comparison of the Contractor's cost experience in the operation of the equipment before and after modernization.

(d) Amounts due the Government under this clause shall be returned by the Contractor, as directed by the Contracting Officer, by—

- (1) Credits to, or adjustment of the prices of, the related contracts benefitting from using the modernized or replacement equipment;
- (2) Payment to the Government through the Contracting Officer having cognizance of the equipment; or
- (3) Any other means mutually agreed to.

(End of clause)

52.245-17 Special Tooling.

As prescribed in 45.306-5, insert the following clause:

SPECIAL TOOLING (DEC 1989)

(a) *Definition.*

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, other equipment and manufacturing aids, all components of these items, and replacements of these items that are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or performing particular services. It does not include material, special test equipment, facilities (except foundations and similar improvements necessary for installing special tooling), general or special machine tools, or similar capital items. Special tooling, for the purpose of this clause, includes all special tooling acquired or fabricated by the Contractor for the Government (other than special tooling to be delivered as a line item) or furnished by the Government for use in connection with and under the terms of the contract.

(b) *Title.* The Government retains title to Government-owned special tooling and option to take title to all special tooling subject to this clause until such time as title or option

to take title is relinquished by the Contracting Officer as provided for in paragraphs (j)(2) and (j)(3) of this clause.

(c) *Risk of loss.* Except to the extent that the Government shall have otherwise assumed the risk of loss to special tooling applicable to this clause, in the event of the loss, theft or destruction of or damage to any such property, the repair or replacement shall be accomplished by the Contractor at its own expense.

(d) *Special tooling furnished by the Government.*

(1) Except as otherwise provided in this contract, all Government-furnished special tooling is provided "as is." The Government makes no warranty whatsoever with respect to special tooling furnished "as is," except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when last available for inspection by the Contractor under the solicitation.

(2) The Contractor may repair any special tooling made available on an "as is" basis. Such repair will be at the Contractor's expense, except as otherwise provided in this clause. Such property may be modified as necessary for use under this contract at the Contractor's expense, except as otherwise directed by the Contracting Officer. Any repair or modification of property furnished "as is" shall not affect the title of the Government.

(3) If there is any change in the condition of special tooling furnished "as is" from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation or the Government directs a change in the quantity of special tooling furnished or to be furnished, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts, and, as directed by the Contracting Officer, either (i) return such items at the Government's expense or otherwise dispose of the property, or (ii) effect repair to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of special tooling in a condition or in quantities other than that when originally offered.

(e) *Use of special tooling.* The Contractor may use special tooling subject to this clause on other Government effort when specifically approved in writing by the Contracting Officer for this contract and the Contracting Officer for the contract under which the special tooling will be used. Any other use of the special tooling shall be subject to advance written approval of the Contracting Officer. In the event the

Government elects to remove any special tooling that is required for continued contract performance, the contract shall be equitably adjusted in accordance with paragraph (m) of this clause.

(f) *Property control—(1) Records.* The Contractor's special tooling records shall provide the following minimum information regarding each item of special tooling subject to this clause and shall be made available for Government inspection at all reasonable times:

(i) Number or code of the contract to which the tooling is accountable and the number or code of the contract for which the tooling was originally acquired or fabricated.

(ii) Retention codes as defined below:

(A) *Primary Code.* Assign one of the following to each item of special tooling:

Code A. Spares Tooling. Required to produce a provisioned spare part or assembly.

Code B. Judgment (Insurance) Tooling. Fabrication tools for parts that are not provisioned spares but which in the judgment of the Contractor will be required at some time for logistic support of the end item.

Code C. Rate Tooling. Necessary to economically produce at increased rates (e.g., for mobilization or surge) but not essential for parts fabrication at low production rates.

Code D. Assembly Tooling. Required for manufacture of the end product but not required for production of spare parts. Those items having no postproduction need except for potential modification or resumed production programs.

(B) *Secondary Code.* Assign one or more of the following codes, as applicable, to each item of special tooling:

Code 1. Repair Tooling. Items which are capable of being used for repair of provisioned parts or assemblies.

Code 2. Replaceable Tooling. Spares or judgment tooling (primary retention codes A or B) which, in the opinion of the Contractor, can be effectively and economically replaced by "soft" tooling on an "as required" basis in lieu of retention of the "hard" production tooling for supporting postproduction requirements.

Code 3. Maintenance Tooling. Items which are capable of being used for depot level maintenance of the applicable end item or components thereof.

Code 4. Crash Damage Tooling. Items which apply to provisioned or nonprovisioned parts or assemblies which are designated as or have the potential of being required for crash damage repairs.

(iii) Nomenclature, function, or comparable code.

(iv) Tool part number or code.

(v) Tool identification number, or quantity of each tool part number or code, if tool identification number is not assigned.

(vi) Part number(s) of item(s) on which used (complete hierarchy of part numbers).

(vii) Unit price. (Estimates are acceptable.)
 (viii) Storage method code. Assign one of the following:

- Code J.* Inside storage.
- Code K.* Outside storage.
- Code L.* Other.

(ix) Estimated weight of tool, if over 25 pounds.
 (x) Estimated volume of tool, if over 3 cubic feet.
 (xi) Location of Contractor, subcontractor, vendor for each item. Use Federal Supply Code for Manufacturers (FSCM), or name and address if code is not available.

(xii) All operation sheets or other data as are necessary to show the manufacturing operation or processes for which such items were used, designed, or modified.

(2) *Identification or tagging.* To the extent practicable, the Contractor shall identify all special tooling subject to this clause in accordance with the Contractor's identification procedures.

(g) *Maintenance.* The Contractor shall maintain special tooling in accordance with sound industrial practice. These requirements do not apply to those items designated by the Contracting Officer for disposal as scrap or identified as of no further interest to the Government under paragraph (j), Disposition instructions, of this clause.

(h) *Identification of excess special tooling.* The Contractor shall promptly identify and report all special tooling in excess of the amounts needed to complete full performance under this contract (see subdivision (i)(2)(i) of this clause).

(i) *Lists of special tooling.* The Contractor shall periodically prepare and distribute lists of special tooling as described below:

(1) *Special tooling list.* The list shall be furnished within 60 days after delivery of the first production end item under this contract or completion of the initial provisioning process, whichever is later, and shall include all special tooling subject to this clause as of the reporting date. However, if this contract represents the final production contract, the Contractor shall provide this list of all tools not later than 180 days prior to scheduled delivery of the last production end item. If this is a contract for storage of special tooling, the list shall be provided within 60 days of contract implementation.

(2) *Excess special tooling list—(i) Excess special tooling.* Except for items subject to subdivision (i)(2)(ii) of this clause, lists of special tooling excess to this contract shall be furnished within 60 days of the date that the item is determined to be excess. The Contractor shall include in this list the information prescribed in Format of lists, paragraph (i)(3) of this clause, as well as the applicable excess code as follows:

Code V. Excess to contract requirements with no follow-on requirements.

Code W. Excess to contract requirements but can be used to support actual or anticipated follow-on requirements.

Code X. Excess due to changes in design or specification of the end items.

Code Y. Excess due to nonserviceable or nonrepairable condition.

Code Z. Other.

(ii) *Termination inventory.* These items shall be submitted on SF 1432 or by computer list attached to an SF 1432 in accordance with MMAR 45.606. Format and content of this submission will be as prescribed by Format of lists, paragraph (i)(3) of this clause, but will contain information as prescribed by MMAR Subpart 45.6, in effect on the date of award of this contract.

(3) *Format of lists.* Lists furnished by the Contractor shall state the type of list and shall include all information from paragraph (f)(1), Records, of this clause, items (i) through (xi). All lists will be grouped by primary retention code as prescribed in subdivision (f)(1)(ii)(A) of this clause and further listed in tool part number sequence.

(4) *Distribution of lists.* The Contractor shall submit two copies of lists to each of the following recipients unless otherwise directed:

(i) The Contracting Officer.

(ii) The Administrative Contracting Officer.

(iii) The inventory control point designated by the contracting office.

(j) *Disposition instructions.* The Contracting Officer shall provide the Contractor with written disposition instructions within 180 days of receipt of the list as prescribed by paragraph (i)(1) of this clause and within 90 days of the receipt of excess special tooling lists reported in accordance with paragraph (i)(2) of this clause. The Contracting Officer may direct disposition by any of the methods listed in paragraphs (j)(1) through (j)(3) of this clause, or a combination of such methods. The Contractor shall comply with such disposition instructions.

(1) The Contracting Officer may identify specific items of special tooling to be retained or give the Contractor a list specifying the products, parts, or services including follow-on requirements for which the Government may require special tooling and request the Contractor to identify all usable items of special tooling on hand that were designed for or used in the production or performance of such products, parts, or services. Once items of usable special tooling required by the Government are identified, the Contracting Officer may—

(i) Direct the Contractor to transfer specified items of special tooling to follow-on contracts requiring their use. Those items shall be furnished for use on the contract(s) as specified by the Contracting Officer and shall be subject to the provisions of the gaining contract(s); or

(ii) Request the Contractor to enter into an appropriate storage contract for special tooling specified to be retained

by the Contractor for the Government. Tooling to be stored shall be stored pursuant to a storage contract between the Government and the Contractor; or

(iii) Direct the Contractor to transfer title to the Government (to the extent not previously transferred) and deliver to the Government those items of special tooling which are specified for removal from the Contractor's plant.

(2) The Contracting Officer may direct the Contractor to sell, or dispose of as scrap, for the account of the Government, any special tooling not specified by the Government pursuant to paragraph (j)(1) of this clause. To the extent that the Contractor incurs any costs occasioned by compliance with such direction, for which it is not otherwise compensated, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract. The net proceeds of all sales shall either be credited to the cost of contract performance or shall be otherwise paid to the Government as directed by the Contracting Officer. Sale of special tooling to the prime Contractor or any of its subcontractors is subject to the prior written approval of the Contracting Officer.

(3) The Contracting Officer may furnish the Contractor with a statement disclaiming further Government interest or right in specified special tooling.

(4) *Restoration of Contractor's premises.* Unless otherwise provided in this contract, the Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if special tooling is withdrawn or if other special tooling is substituted, then the equitable adjustment under paragraph (m) of this clause may properly include restoration or rehabilitation costs.

(k) *Access to special tooling.* The Contractor shall provide access to special tooling subject to this clause at all reasonable times to all individuals designated by the Contracting Officer.

(l) *Storage or shipment.* The Contractor shall promptly arrange for either the shipment or the storage of special tooling specified in accordance with the final disposition instructions in subdivisions (j)(1)(ii) or (j)(1)(iii) of this clause. Tooling to be shipped shall be properly packaged, packed, and marked in accordance with the directions of the Contracting Officer. All operation sheets or other appropriate data necessary to show the manufacturing operations or processes for which the items were used or designed shall accompany special tooling to be shipped or stored or shall otherwise be provided to the Government as directed by the Contracting Officer. To the extent that the Contractor incurs costs for storage, shipment, packing, crating, or handling under this paragraph and not otherwise compensated for, the contract price shall be equitably adjusted in accordance with the Changes clause of this contract.

(m) *Equitable adjustment.* When this clause specifies an equitable adjustment, it shall be made to any affected contract provision in accordance with the procedures of the Changes clause. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for—

(1) Any delay in delivery of Government-furnished special tooling;

(2) Delivery of Government-furnished special tooling in a condition not suitable for its intended use;

(3) A decrease in or substitution of special tooling; or

(4) Failure to repair or replace Government-furnished special tooling for which the Government is responsible.

(n) *Subcontract provisions.* In order to perform this contract, the Contractor may place subcontracts (including purchase orders) involving the use of special tooling. If the full cost of the tooling is charged to those subcontracts, the Contractor agrees to include in the subcontract appropriate provisions to obtain Government rights and data comparable to the rights of the Government under this clause (unless the Contractor and Contracting Officer agree in writing that such rights are not of interest to the Government). The Contractor agrees to exercise such rights for the benefit of the Government as directed by the Contracting Officer.

(End of clause)

52.245-18 Special Test Equipment.

As prescribed in 45.307-3, insert the following clause:

SPECIAL TEST EQUIPMENT (FEB 1993)

(a) "Special test equipment," as used in this clause, means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment, including standard or general purpose items or components, that are interconnected and interdependent so as to become a new functional entity for special testing purposes. It does not include material, special tooling, facilities (except foundations and similar improvements necessary for installing special test equipment), and plant equipment items used for general plant testing purposes.

(b) The Contractor may either acquire or fabricate special test equipment at Government expense when the equipment is not otherwise itemized in this contract and the prior approval of the Contracting Officer has been obtained. The Contractor shall provide the Contracting Officer with a written notice, at least 30 days in advance, of the Contractor's intention to acquire or fabricate the special test equipment. As a minimum, the notice shall also include an estimated aggregate cost of all items and components of the equipment the individual cost of which is less than \$5,000, and the following

information on each item or component of equipment costing \$5,000 or more:

(1) The end use application and function of each proposed special test unit, identifying special characteristics and the reasons for the classification of the test unit as special test equipment.

(2) A complete description identifying the items to be acquired and the items to be fabricated by the Contractor.

(3) The estimated cost of the item of special test equipment or component.

(4) A statement that intra-plant screening of Contractor and Government-owned special test equipment and components has been accomplished and that none are available for use in performing this contract.

(c) The Government may furnish any special test equipment or components rather than approve their acquisition or fabrication by the Contractor. Such Government-furnished items shall be subject to the Government Property clause, except that the Government shall not be obligated to deliver such items any sooner than the Contractor could have acquired or fabricated them after expiration of the 30-day notice period in paragraph (b) of this clause. However, unless the Government notifies the Contractor of its decision to furnish the items within the 30-day notice period, the Contractor may proceed to acquire or fabricate the equipment or components subject to any other applicable provisions of this contract.

(d) The Contractor shall, in any subcontract that provides that special test equipment or components may be acquired or fabricated for the Government, insert provisions that conform substantially to the language of this clause, including this paragraph (d). The Contractor shall furnish the names of such subcontractors to the Contracting Officer.

(e) If an engineering change requires either the acquisition or fabrication of new special test equipment or substantial modification of existing special test equipment, the Contractor shall comply with paragraph (b) of this clause. In so complying, the Contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(End of clause)

52.245-19 Government Property Furnished “As Is.”

As prescribed in 45.308-2, insert the following clause:

GOVERNMENT PROPERTY FURNISHED “AS IS” (APR 1984)

(a) The Government makes no warranty whatsoever with respect to Government property furnished “as is,” except that the property is in the same condition when placed at the f.o.b. point specified in the solicitation as when inspected by the Contractor pursuant to the solicitation or, if not inspected by the Contractor, as when last available for inspection under the solicitation.

(b) The Contractor may repair any property made available on an “as is” basis. Such repair will be at the Contractor’s expense except as otherwise provided in this clause. Such property may be modified at the Contractor’s expense, but only with the written permission of the Contracting Officer. Any repair or modification of property furnished “as is” shall not affect the title of the Government.

(c) If there is any change in the condition of Government property furnished “as is” from the time inspected or last available for inspection under the solicitation to the time placed on board at the location specified in the solicitation, and such change will adversely affect the Contractor, the Contractor shall, upon receipt of the property, notify the Contracting Officer detailing the facts and, as directed by the Contracting Officer, either (1) return such property at the Government’s expense or otherwise dispose of the property or (2) effect repairs to return the property to its condition when inspected under the solicitation or, if not inspected, last available for inspection under the solicitation. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall equitably adjust any contractual provisions affected by the return, disposition, or repair in accordance with the procedures provided for in the Changes clause of this contract. The foregoing provisions for adjustment are the exclusive remedy available to the Contractor, and the Government shall not be otherwise liable for any delivery of Government property furnished “as is” in a condition other than that in which it was originally offered.

(d) Except as otherwise provided in this clause, Government property furnished “as is” shall be governed by the Government Property clause of this contract.

(End of clause)

52.246-1 Contractor Inspection Requirements.

As prescribed in 46.301, insert the following clause:

CONTRACTOR INSPECTION REQUIREMENTS (APR 1984)

The Contractor is responsible for performing or having performed all inspections and tests necessary to substantiate that the supplies or services furnished under this contract conform to contract requirements, including any applicable technical requirements for specified manufacturers' parts. This clause takes precedence over any Government inspection and testing required in the contract's specifications, except for specialized inspections or tests specified to be performed solely by the Government.

(End of clause)

52.246-2 Inspection of Supplies—Fixed-Price.

As prescribed in 46.302, insert the following clause:

INSPECTION OF SUPPLIES—FIXED-PRICE (AUG 1996)

(a) *Definition.* "Supplies," as used in this clause, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this 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 Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, 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 the work. The Government assumes no contractual obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(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, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

Except as otherwise provided in the contract, 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, 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 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 the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i)(1) If this contract provides for the performance of Government quality assurance at source, and 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 Government's request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise pro-

vided 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.

(l) 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 this 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 reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in 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 paragraph (l)(1) or (l)(2) of this clause and does not cure such failure within a period of 10 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.

(End of clause)

Alternate I (July 1985). If a fixed-price incentive contract is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. 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. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, in the total final negotiated cost fixed under the incentive price revision clause. However, replacements or corrections by the Contractor after

the establishment of the total final price shall be at no increase in the total final price.

(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 equitably reduce the target price or, if established, the total final price or (2) may terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce any target price or, if it is established, the total final contract price. Failure to agree upon an equitable price reduction shall be a dispute.

(l) 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 this contract, shall have the right to require the Contractor (1) at no increase in any target price or, if it is established, the total final price of this contract, 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 reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in any target price, or, if it is established, the total final price of this contract, 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 total final price 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 costs 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 paragraph (l)(1) or (l)(2) of this clause and does not cure such failure within a period of 10 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 equitably reduce any target price or, if it is established, the total final price of this contract.

Alternate II (July 1985). If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, substitute paragraphs (g), (h), and (l) below for paragraphs (g), (h), and (l) of the basic clause:

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice. 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. Cost of removal, replacement, or correction shall be considered a cost incurred, or to be incurred, when redetermining the prices under the price redetermination clause. How-

ever, replacements or corrections by the Contractor after the establishment of the redetermined prices shall be at no increase in the redetermined price.

(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 equitably reduce the initial contract prices or, if established, the redetermined contract prices or (2) terminate the contract for default. Unless the Contractor corrects or replaces the nonconforming supplies within the delivery schedule, the Contracting Officer may require their delivery and equitably reduce the initial contract price or, if it is established, the redetermined contract prices. Failure to agree upon an equitable price reduction shall be a dispute.

(l) 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 this contract, shall have the right to require the Contractor (1) at no increase in the initial contract prices, or, if it is established, the redetermined prices of this contract, 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 reasonable 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 initial contract prices, or, if it is established, the redetermined prices of this contract, 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 initial contract prices, or, if it is established, the redetermined prices of this 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 costs 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 paragraph (l)(1) or (l)(2) of this clause and does not cure such failure within a period of 10 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 equitably reduce the initial contract prices, or, if it is established, the redetermined prices of this contract.

52.246-3 Inspection of Supplies—Cost-Reimbursement.

As prescribed in 46.303, insert the following clause in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a cost-reimbursement contract is contemplated:

INSPECTION OF SUPPLIES—COST-REIMBURSEMENT (MAY 2001)

(a) *Definitions.* As used in this clause—

“Contractor’s managerial personnel” means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operation at a plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

“Supplies” includes but is not limited to raw materials, components, intermediate assemblies, end products, lots of supplies, and, when the contract does not include the Warranty of Data clause, data.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies, fabricating methods, and special tooling under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the contract supplies, to the extent practicable at all places and times, including the period of manufacture, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(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 all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept supplies as promptly as practicable after delivery, and supplies shall be deemed accepted 60 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of the supplies to be delivered under the contract, the Government may require the Contractor to replace or correct any supplies that are nonconforming at time of delivery. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be included in allowable cost, determined as provided in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor

shall not tender for acceptance supplies required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of undelivered supplies at an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged to the Contractor or to the reduction in the fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) of this clause, the Government may at any time require the Contractor to correct or replace, without cost to the Government, nonconforming supplies, if the nonconformances are due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner to corrected or replacement supplies as to supplies originally delivered.

(j) The Contractor shall have no obligation or liability under this contract to replace supplies that were nonconforming at the time of delivery, except as provided in this clause or as may be otherwise provided in the contract.

(k) Except as otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

52.246-4 Inspection of Services—Fixed-Price.

As prescribed in 46.304, insert the following clause:

INSPECTION OF SERVICES—FIXED-PRICE (AUG 1996)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and

made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may—

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce the contract price to reflect the reduced value of the services performed.

(f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may—

(1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or

(2) Terminate the contract for default.

(End of clause)

52.246-5 Inspection of Services—Cost-Reimbursement.

As prescribed in 46.305, insert the following clause in solicitations and contracts for services, or supplies that involve the furnishing of services, when a cost-reimbursement contract is contemplated:

INSPECTION OF SERVICES—COST-REIMBURSEMENT (APR 1984)

(a) *Definition.* "Services," as used in this clause, includes services performed, workmanship, and material furnished or used in performing services.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Govern-

ment shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If any of the services performed do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, for no additional fee. When the defects in services cannot be corrected by reperformance, the Government may—

(1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and

(2) Reduce any fee payable under the contract to reflect the reduced value of the services performed.

(e) If the Contractor fails to promptly perform the services again or take the action necessary to ensure future performance in conformity with contract requirements, the Government may—

(1) By contract or otherwise, perform the services and reduce any fee payable by an amount that is equitable under the circumstances; or

(2) Terminate the contract for default.

(End of clause)

52.246-6 Inspection—Time-and-Material and Labor-Hour.

As prescribed in 46.306, insert the following clause:

INSPECTION—TIME-AND-MATERIAL AND LABOR-HOUR (MAY 2001)

(a) *Definitions.* As used in this clause—

“Contractor’s managerial personnel” means any of the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operation at any one plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

“Materials” includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the material, fabricating methods, work, and services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all materials furnished and services performed under this con-

tract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(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 all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise specified in the contract, the Government shall accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they shall be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (h) of this clause, the cost of replacement or correction shall be determined under the Payments Under Time-and-Materials and Labor-Hour Contracts clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(ii) Terminate this contract for default.

(2) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) of this clause, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel; or

(2) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(j) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(k) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(End of clause)

Alternate I (Apr 1984). If Government inspection and acceptance are to be performed at the contractor's plant, paragraph (e) below may be substituted for paragraph (e) of the basic clause:

(e) The Government shall inspect for acceptance all items (other than aircraft to be flown away, if any) to be furnished under this contract at the Contractor's plant or plants specified in the contract, or at any other plant or plants approved for such purpose in writing by the Contracting Officer. The Contractor shall inform the contract administration office or Contracting Officer when the work is ready for inspection. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when items are not ready at the time for which inspection and test is requested by the Contractor.

52.246-7 Inspection of Research and Development—Fixed-Price.

As prescribed in 46.307(a), insert the following clause:

INSPECTION OF RESEARCH AND DEVELOPMENT— FIXED-PRICE (AUG 1996)

(a) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(b) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also

inspect the premises of the Contractor or any subcontractor engaged in contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(c) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises.

(d) The Government shall accept or reject the work as promptly as practicable after delivery, unless otherwise specified in the contract. Government failure to inspect and accept or reject the work shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming work. Work is nonconforming when it is defective in material or workmanship or is otherwise not in conformity with contract requirements.

(e) The Government has the right to reject nonconforming work. If the Contractor fails or is unable to correct or to replace nonconforming work within the delivery schedule (or such later time as the Contracting Officer may authorize), the Contracting Officer may accept the work and make an equitable price reduction. Failure to agree on a price reduction shall be a dispute.

(f) Inspection and test by the Government does not relieve the Contractor from responsibility for defects or other failures to meet the contract requirements that may be discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise specified in the contract. If acceptance is not conclusive for any of these causes, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this 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 (work) at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; provided, the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule; or

(2) Within a reasonable time after the Contractor's receipt of notice of defects or nonconformance, to repayment of such portion of the contract price as is equitable under the circumstances if the Government elects not to require correction or replacement. When supplies (work) are (is) returned to

the Contractor, the Contractor shall bear transportation costs from the original point of delivery to the Contractor's plant and return to the original point of delivery when that point is not the Contractor's plant.

(End of clause)

**52.246-8 Inspection of Research and Development—
Cost-Reimbursement.**

As prescribed in 46.308, insert the following clause in solicitations and contracts for research and development when—

(a) The primary objective is the delivery of end items other than designs, drawings, or reports; and

(b) Cost-reimbursement contract is contemplated; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate:

INSPECTION OF RESEARCH AND DEVELOPMENT—
COST-REIMBURSEMENT (MAY 2001)

(a) *Definitions.* As used in this clause—

“Contractor’s managerial personnel” means the Contractor’s directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor’s business;

(2) All or substantially all of the Contractor’s operation at any one plant or separate location where the contract is being performed; or

(3) A separate and complete major industrial operation connected with performing this contract.

“Work” includes data when the contract does not include the Warranty of Data clause.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the work under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test all work called for by the contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or its subcontractors engaged in the contract performance. The Government shall perform inspections and tests in a manner that will not unduly delay the work.

(d) If the Government performs any inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) Unless otherwise provided in the contract, the Government shall accept work as promptly as practicable after deliv-

ery, and work shall be deemed accepted 90 days after delivery, unless accepted earlier.

(f) At any time during contract performance, but no later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to replace or correct work not meeting contract requirements. Time devoted to the replacement or correction of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (h) of this clause, the cost of replacement or correction shall be determined as specified in the Allowable Cost and Payment clause, but no additional fee shall be paid. The Contractor shall not tender for acceptance work required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken.

(g)(1) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

(i) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or make an equitable reduction in any fixed fee paid or payable under the contract;

(ii) Require delivery of any undelivered articles and shall have the right to make an equitable reduction in any fixed fee paid or payable under the contract; or

(iii) Terminate the contract for default.

(2) Failure to agree on the amount of increased cost to be charged the Contractor or to the reduction in fixed fee shall be a dispute.

(h) Notwithstanding paragraphs (f) and (g) of this clause, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(1) Fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel; or

(2) The conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(i) This clause shall apply in the same manner to a corrected or replacement end item or components as to work originally delivered.

(j) The Contractor has no obligation or liability under the contract to correct or replace articles not meeting contract requirements at time of delivery, except as provided in this clause or as may otherwise be specified in the contract.

(k) Unless otherwise provided in the contract, the Contractor’s obligations to correct or replace Government-furnished

property shall be governed by the clause pertaining to Government property.

(End of clause)

Alternate I (Apr 1984). If it is contemplated that the contract will be on a no-fee basis, substitute paragraphs (f) and (g) below for paragraphs (f) and (g) of the basic clause.

(f) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of all of the end items (other than designs, drawings, or reports) to be delivered under the contract, the Government may require the Contractor to correct or replace work not meeting contract requirements. Time devoted to the correction or replacement of such work shall not be included in the computation of the above time period. Except as otherwise provided in paragraph (g) of this clause, the allowability of the cost of any such replacement or correction shall be determined as specified in the Allowable Cost and Payment clause. The Contractor shall not tender for acceptance corrected work without disclosing the former requirement for correction, and, when required, shall disclose the corrective action taken.

(g) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, the Government may—

- (1) By contract or otherwise, perform the replacement or correction and charge to the Contractor any increased cost;
- (2) Require delivery of any undelivered articles; or
- (3) Terminate the contract for default. Failure to agree on the amount of increased cost to be charged to the Contractor shall be a dispute.

52.246-9 Inspection of Research and Development (Short Form).

As prescribed in 46.309, insert the following clause:

INSPECTION OF RESEARCH AND DEVELOPMENT (SHORT FORM) (APR 1984)

The Government has the right to inspect and evaluate the work performed or being performed under the contract, and the premises where the work is being performed, at all reasonable times and in a manner that will not unduly delay the work. If the Government performs inspection or evaluation on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(End of clause)

52.246-10 Inspection of Facilities.

As prescribed in 46.310, insert the following clause in solicitations and contracts when a facilities contract is contemplated:

INSPECTION OF FACILITIES (APR 1984)

(a) *Definition.* “Contractor’s managerial personnel,” as used in this clause, is defined in the Liability for the Facilities clause of this contract.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the facilities and work called for by this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.

(c) The Government has the right to inspect and test the facilities and work called for by the contract, to the extent practicable at all places and times, including the period of manufacture. The Government may also inspect the facilities and work at the plant or plants of the Contractor or its subcontractors engaged in the performance of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work to be performed by the Contractor under this contract or any related contract.

(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 all reasonable facilities and assistance for the safe and convenient performance of these duties.

(e) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements. Except as provided in paragraph (f) of this clause, corrections and replacements shall be at Government expense if, under the terms of this contract, the facilities or work corrected or replaced were initially furnished, or required to be performed at Government expense.

(f) The Contracting Officer may, at any time, require the Contractor to correct or replace facilities or work that is defective or does not conform to contract requirements, without cost to the Government under this contract or any related contract or subcontract, if the defects or failures are due to fraud, lack of good faith, or willful misconduct on the part of the Contractor’s managerial personnel; or to the conduct of one or more of the Contractor’s employees selected or retained by the Contractor after any of the Contractor’s managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(g) Corrected or replacement facilities or work shall be subject to this clause in the same manner as facilities or work originally completed under the contract.

(End of clause)

52.246-11 Higher-Level Contract Quality Requirement.

As prescribed in 46.311, insert the following clause:

HIGHER-LEVEL CONTRACT QUALITY REQUIREMENT
(FEB 1999)

The Contractor shall comply with the higher-level quality standard selected below. *[If more than one standard is listed, the offeror shall indicate its selection by checking the appropriate block.]*

	TITLE	NUMBER	DATE	TAILORING
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____
<input type="checkbox"/>	_____	_____	_____	_____

[Contracting Officer insert the title, number (if any), date, and tailoring (if any) of the higher-level quality standards.]

(End of clause)

52.246-12 Inspection of Construction.

As prescribed in 46.312, insert the following clause:

INSPECTION OF CONSTRUCTION (AUG 1996)

(a) *Definition.* “Work” includes, but is not limited to, materials, workmanship, and manufacture and fabrication of components.

(b) The Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the contract conforms to contract requirements. The Contractor shall maintain complete inspection records and make them available to the Government. All work shall be conducted under the general direction of the Contracting Officer and is subject to Government inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the contract.

(c) Government inspections and tests are for the sole benefit of the Government and do not—

- (1) Relieve the Contractor of responsibility for providing adequate quality control measures;
- (2) Relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- (3) Constitute or imply acceptance; or
- (4) Affect the continuing rights of the Government after acceptance of the completed work under paragraph (i) of this section.

(d) The presence or absence of a Government inspector does not relieve the Contractor from any contract requirement, nor is the inspector authorized to change any term or condition of the specification without the Contracting Officer’s written authorization.

(e) The Contractor shall promptly furnish, at no increase in contract price, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by the Contracting Officer. The

Government may charge to the Contractor any additional cost of inspection or test when work is not ready at the time specified by the Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. The Government shall perform all inspections and tests in a manner that will not unnecessarily delay the work. Special, full size, and performance tests shall be performed as described in the contract.

(f) The Contractor shall, without charge, replace or correct work found by the Government not to conform to contract requirements, unless in the public interest the Government consents to accept the work with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(g) If the Contractor does not promptly replace or correct rejected work, the Government may—

- (1) By contract or otherwise, replace or correct the work and charge the cost to the Contractor; or
- (2) Terminate for default the Contractor’s right to proceed.

(h) If, before acceptance of the entire work, the Government decides to examine already completed work by removing it or tearing it out, the Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the work is found to be defective or nonconforming in any material respect due to the fault of the Contractor or its subcontractors, the Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the work is found to meet contract requirements, the Contracting Officer shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the work was thereby delayed, an extension of time.

(i) Unless otherwise specified in the contract, the Government shall accept, as promptly as practicable after completion and inspection, all work required by the contract or that portion of the work the Contracting Officer determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or the Government’s rights under any warranty or guarantee.

(End of clause)

52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.

As prescribed in 46.313, insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements:

INSPECTION—DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS (AUG 1996)

(a) Unless otherwise designated by the specifications, all workmanship performed under the contract is subject to Gov-

ernment inspection at all times and places where dismantling or demolition work is being performed. The Contractor shall furnish promptly, and at no increase in contract price, all reasonable facilities, labor, and materials necessary for safe and convenient inspection by the Government. The Government shall perform inspections in a manner that will not unduly delay the work.

(b) The Contractor is responsible for damage to property caused by defective workmanship. The Contractor shall promptly segregate and remove from the premises any unsatisfactory facilities, materials, and equipment used in contract performance, and promptly replace them with satisfactory items. If the Contractor fails to proceed at once in a workmanlike manner with performance of the work or with the correction of defective workmanship, the Government may—

(1) By contract or otherwise, replace the facilities, materials, and equipment or correct the workmanship and charge the cost to the Contractor; and

(2) Terminate for default the Contractor's right to proceed. The Contractor and any surety shall be liable, to the extent specified in the contract for any damage or cost of repair or replacement.

(End of clause)

52.246-14 Inspection of Transportation.

As prescribed in 46.314, insert the following clause in solicitations and contracts for freight transportation services (including local drayage) by rail, motor (including bus), domestic freight forwarder, and domestic water carriers (including inland, coastwise, and intercoastal). The contracting officer shall not use the clause for the acquisition of transportation services by domestic or international air carriers or by international ocean carriers, or to freight services provided under bills of lading or to those negotiated for reduced rates under 49 U.S.C. 13712. (See Part 47, Transportation.)

INSPECTION OF TRANSPORTATION (APR 1984)

The Government has the right to inspect and test the Contractor's services, facilities, and equipment at all reasonable times. The Contractor shall furnish Government representatives with the free access and reasonable facilities and assistance required to accomplish their inspections and tests.

(End of clause)

52.246-15 Certificate of Conformance.

As prescribed in 46.315, insert the following clause in solicitations and contracts for supplies or services when the conditions in 46.504 apply:

CERTIFICATE OF CONFORMANCE (APR 1984)

(a) When authorized in writing by the cognizant Contract Administration Office (CAO), the Contractor shall ship with

a Certificate of Conformance any supplies for which the contract would otherwise require inspection at source. In no case shall the Government's right to inspect supplies under the inspection provisions of this contract be prejudiced. Shipments of such supplies will not be made under this contract until use of the Certificate of Conformance has been authorized in writing by the CAO, or inspection and acceptance have occurred.

(b) The Contractor's signed certificate shall be attached to or included on the top copy of the inspection or receiving report distributed to the payment office or attached to the CAO copy when contract administration (Block 10 of the DD Form 250) is performed by the Defense Contract Administration Services. In addition, a copy of the signed certificate shall also be attached to or entered on copies of the inspection or receiving report accompanying the shipment.

(c) The Government has the right to reject defective supplies or services within a reasonable time after delivery by written notification to the Contractor. The Contractor shall in such event promptly replace, correct, or repair the rejected supplies or services at the Contractor's expense.

(d) The certificate shall read as follows:

I certify that on _____ [insert date], the _____ [insert Contractor's name] furnished the supplies or services called for by Contract No. _____ via _____ [Carrier] on _____ [identify the bill of lading or shipping document] in accordance with all applicable requirements. I further certify 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 number), and are in the quantity shown on this or on the attached acceptance document.

DATE OF EXECUTION: _____

SIGNATURE: _____

TITLE: _____

52.246-16 Responsibility for Supplies.

As prescribed in 46.316, insert the following clause:

RESPONSIBILITY FOR SUPPLIES (APR 1984)

(a) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(b) Unless the contract specifically provides otherwise, risk of loss of or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon—

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Acceptance by the Government or delivery of the supplies to the Government at the destination specified in the contract, whichever is later, if transportation is f.o.b. destination.

(c) Paragraph (b) of this clause shall not apply to supplies that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such non-conforming supplies remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (b) of this clause shall apply.

(d) Under paragraph (b) of this clause, the Contractor shall not be liable for loss of or damage to supplies caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

(End of clause)

52.246-17 Warranty of Supplies of a Noncomplex Nature.

As prescribed in 46.710(a)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A NONCOMPLEX NATURE (MAY 2001)

(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 approves specific services as partial or complete performance of the contract.

“Supplies” means the end items furnished by the Contractor and related services required under this contract. The word does not include “data.”

(b) *Contractor’s obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under this contract, or any condition of this contract concerning the conclusiveness thereof, the Contractor warrants that for _____ [*Contracting Officer shall state specific period of time after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*]—

(i) All supplies furnished under this contract will be free from defects in material or workmanship and will conform with all requirements of this 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 this 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 this 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 contract.

(c) *Remedies available to the Government.* (1) The Contracting Officer shall give written notice to the Contractor of any breach of warranties in paragraph (b)(1) of this clause within _____ [*Contracting Officer shall insert specific period of time; e.g., “45 days of the last delivery under this contract,” or “45 days after discovery of the defect”*].

(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 this 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 action shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under this 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 with similar 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 10 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 the 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 of this contract.

(End of clause)

Alternate I [Reserved]

Alternate II (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(2) for paragraph (b)(2) of the basic clause:

(2) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate III (Apr 1984). If the supplies cannot be obtained from another source, substitute a paragraph substantially the same as the following paragraph (c)(4) for paragraph (c)(4) of the basic clause:

(4) If the Contractor does not agree as to responsibility to correct or replace the supplies delivered, the Contractor shall nevertheless proceed in accordance with the written request issued by the Contracting Officer under paragraph (c)(2) of this clause to correct or replace the defective or nonconforming supplies. In the event it is later determined that the supplies were not defective or nonconforming within the terms and conditions of this clause, the contract price will be equitably adjusted.

Alternate IV (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph(c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustment made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate V (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if Alternate IV is also being used.

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-18 Warranty of Supplies of a Complex Nature.

As prescribed in 46.710(b)(1), insert a clause substantially as follows:

WARRANTY OF SUPPLIES OF A COMPLEX NATURE (MAY 2001)

(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 and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Supplies" means the end items furnished by the Contractor and related services required under this contract. The word does not include "data."

(b) *Contractor's obligations.* (1) The Contractor warrants that for _____ [*Contracting Officer shall state the specific warranty period after delivery, or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combinations of any applicable events or periods of time*] all supplies furnished under this contract will be free from defects in material and workmanship and will conform with all requirements of this contract; provided, however, that with respect to Government-furnished property, the Contractor's warranty shall extend only to its proper installation, unless the Contractor performs some modification or other work on the property, in which case the Contractor's warranty shall extend to the modification or other work.

(2) Any supplies or parts thereof corrected or furnished in replacement shall be subject to the conditions of this clause to the same extent as supplies initially delivered. This warranty shall be equal in duration to that set forth in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(3) The Contractor shall not be obligated to correct or replace supplies if the facilities, tooling, drawings, or other equipment or supplies necessary to accomplish the correction or replacement have been made unavailable to the Contractor by action of the Government. In the event that correction or replacement has been directed, the Contractor shall promptly notify the Contracting Officer, in writing, of the nonavailability.

(4) The Contractor shall also prepare and furnish to the Government data and reports applicable to any correction required (including revision and updating of all affected data called for under this contract) at no increase in the contract price.

(5) When supplies are returned to the Contractor, the Contractor shall bear the transportation costs from the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return.

(6) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this contract.

(c) *Remedies available to the Government.* (1) In the event of a breach of the Contractor's warranty in paragraph (b)(1) of this clause, the Government may, at no increase in contract price—

(i) Require the Contractor, at the place of delivery specified in the contract (irrespective of the f.o.b. point or the point of acceptance) or at the Contractor's plant, to repair or replace, at the Contractor's election, defective or nonconforming supplies; or

(ii) Require the Contractor to furnish at the Contractor's plant the materials or parts and installation instructions required to successfully accomplish the correction.

(2) If the Contracting Officer does not require correction or replacement of defective or nonconforming supplies or the Contractor is not obligated to correct or replace under paragraph (b)(3) of this clause, the Government shall be entitled to an equitable reduction in the contract price.

(3) The Contracting Officer shall notify the Contractor in writing of any breach of the warranty in paragraph (b) of this clause within _____. [*Contracting Officer shall insert specific period of time in which notice shall be given to the Contractor; e.g., "45 days after delivery of the nonconforming supplies."; "45 days of the last delivery under this contract."; or "45 days after discovery of the defect."*] The Contractor shall submit to the Contracting Officer a written recommendation within _____ [*Contracting Officer shall insert period of time*] as to the corrective action required to remedy the breach. After the notice of breach, but not later than _____ [*Contracting Officer shall insert period within which the warranty remedies should be exercised*] after receipt of the Contractor's recommendation for corrective action, the Contracting Officer may, in writing, direct correction or replacement as in paragraph (c)(1) of this clause, and the Contractor shall, notwithstanding any disagreement regarding the existence of a breach of warranty, comply with this direction. If it is later determined that the Contractor did not breach the warranty in paragraph (b)(1) of this clause, the contract price will be equitably adjusted.

(4) If supplies are corrected or replaced, the period for notification of a breach of the Contractor's warranty in paragraph (c)(3) of this clause shall be _____ [*Contracting Officer shall insert period within which the Contractor must be notified of a breach as to corrected or replaced supplies*] from the furnishing or return by the Contractor to the Government of the corrected or replaced supplies or parts thereof, or, if correction or replacement is effected by the Contractor at a Government or other activity, for _____ [*Contracting Officer shall insert period within which the Contractor must be notified of a breach of warranty as to corrected or replaced supplies*] thereafter.

(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 of the contract.

(End of clause)

Alternate I [Reserved]

Alternate II (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(5) for paragraph (b)(5) of the basic clause:

(5) If correction or replacement is required and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate III (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause:

(6) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (c)(2) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate IV (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items, add a paragraph substantially the same as the following paragraph (c)(6) to the basic clause. Redesignate the additional paragraph as "(c)(7)" if Alternate III is also used:

(6) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.

As prescribed in 46.710(c)(1), the contracting officer may insert a clause substantially as follows:

WARRANTY OF SYSTEMS AND EQUIPMENT UNDER PERFORMANCE SPECIFICATIONS OR DESIGN CRITERIA (MAY 2001)

(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 and identified supplies, or approves specific services rendered, as partial or complete performance of the contract.

"Defect" means any condition or characteristic in any supplies or services furnished by the Contractor under the contract that is not in compliance with the requirements of the contract.

"Supplies" means the end items furnished by the Contractor and related services required under this contract. Except when this contract includes the clause entitled Warranty of Data, supplies also mean "data."

(b) *Contractor's obligations.* (1) The Contractor's warranties under this clause shall apply only to those defects discovered by either the Government or the Contractor _____ [Contracting Officer shall state the warranty period; e.g., "at

the time of delivery;" "within 45 days after delivery," or the specified event whose occurrence will terminate the warranty period; e.g., the number of miles or hours of use, or combination of any applicable events or periods of time.].

(2) If the Contractor becomes aware at any time before acceptance by the Government (whether before or after tender to the Government) that a defect exists in any supplies or services, the Contractor shall—

(i) Promptly correct the defect; or

(ii) Promptly notify the Contracting Officer, in writing, of the defect, using the same procedures prescribed in paragraph (b)(3) of this clause.

(3) If the Contracting Officer determines that a defect exists in any of the supplies or services accepted by the Government under this contract, the Contracting Officer shall promptly notify the Contractor of the defect, in writing, within _____ [Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., "30 days after delivery of the nonconforming supplies;" "90 days of the last delivery under this contract;" or "90 days after discovery of the defect."]. Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted supplies or services, the Contractor shall submit to the Contracting Officer, in writing, within _____ [Contracting Officer shall insert period of time] a recommendation for corrective actions, together with supporting information in sufficient detail for the Contracting Officer to determine what corrective action, if any, shall be undertaken.

(4) The Contractor shall promptly comply with any timely written direction from the Contracting Officer to correct or partially correct a defect, at no increase in the contract price.

(5) The Contractor shall also prepare and furnish to the Contracting Officer data and reports applicable to any correction required under this clause (including revision and updating of all other affected data called for under this contract) at no increase in the contract price.

(6) In the event of timely notice of a decision not to correct or only to partially correct, the Contractor shall submit a technical and cost proposal within _____. [Contracting Officer shall insert period of time] to amend the contract to permit acceptance of the affected supplies or services in accordance with the revised requirement, and an equitable reduction in the contract price shall promptly be negotiated by the parties and be reflected in a supplemental agreement to this contract.

(7) Any supplies or parts thereof corrected or furnished in replacement and any services reperformed shall also be subject to the conditions of this clause to the same extent as supplies or services initially accepted. The warranty, with

respect to these supplies, parts, or services, shall be equal in duration to that set forth in paragraph (b)(1) of this clause, and shall run from the date of delivery of the corrected or replaced supplies.

(8) The Contractor shall not be responsible under this clause for the correction of defects in Government-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

(9) If the Government returns supplies to the Contractor for correction or replacement under this clause, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in this contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in this contract. The Contractor shall also bear the responsibility for the supplies while in transit.

(10) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation under this contract.

(c) *Remedies available to the Government.* (1) The rights and remedies of the Government provided in this clause—

(i) Shall not be affected in any way by any terms or conditions of this contract concerning the conclusiveness of inspection and acceptance; and

(ii) Are in addition to, and do not limit, any rights afforded to the Government by any other clause of this contract.

(2) Within _____ [*Contracting Officer shall insert period of time*] after receipt of the Contractor's recommendations for corrective action and adequate supporting information, the Contracting Officer, using sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at _____ [*Contracting Officer shall insert locations where corrections may be performed*].

(3) In no event shall the Government be responsible for any extension or delays in the scheduled deliveries or periods of performance under this contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a supplemental agreement with adequate consideration.

(4) This clause shall not be construed as obligating the Government to increase the contract price.

(5)(i) The Contracting Officer shall give the Contractor a written notice specifying any failure or refusal of the Contractor to—

(A) Present a detailed recommendation for corrective action as required by paragraph (b)(3) of this clause;

(B) Correct defects as directed under paragraph (b)(4) of this clause; or

(C) Prepare and furnish data and reports as required by paragraph (b)(5) of this clause.

(ii) The notice shall specify a period of time following receipt of the notice by the Contractor in which the Contractor must remedy the failure or refusal specified in the notice.

(6) If the Contractor does not comply with the Contracting Officer's written notice in paragraph (c)(5)(i) of this clause, the Contracting Officer may by contract or otherwise—

(i) Obtain detailed recommendations for corrective action and either—

(A) Correct the supplies or services; or

(B) Replace the supplies or services, and 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, in which case the Government is entitled to reimbursement from the Contractor, or from the proceeds, for the reasonable expenses of care and disposition, as well as for excess costs incurred or to be incurred;

(ii) Obtain applicable data and reports; and

(iii) Charge the Contractor for the costs incurred by the Government.

(End of clause)

Alternate I (Apr 1984). If it is desirable to specify that necessary transportation incident to correction or replacement will be at the Government's expense (as might be the case if, for example, the cost of a warranty would otherwise be prohibitive), substitute a paragraph substantially the same as the following paragraph (b)(9) for paragraph (b)(9) of the basic clause:

(9) If correction or replacement is required, and transportation of supplies in connection with correction or replacement is necessary, transportation charges and responsibility for the supplies while in transit shall be borne by the Government.

Alternate II (Apr 1984). If a fixed-price incentive contract is contemplated, add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause:

(7) All costs incurred or estimated to be incurred by the Contractor in complying with this clause shall be considered when negotiating the total final price under the Incentive Price Revision clause of this contract. After establishment of the total final price, Contractor compliance with this clause shall be at no increase in the total final price. Any equitable adjustments made under paragraph (b)(6) of this clause shall be governed by the paragraph entitled "Equitable Adjustments Under Other Clauses" in the Incentive Price Revision clause of this contract.

Alternate III (Apr 1984). If it is anticipated that recovery of the warranted item will involve considerable Government expense for disassembly and/or reassembly of larger items,

add a paragraph substantially the same as the following paragraph (c)(7) to the basic clause. Redesignate the additional paragraph as “(c)(8)” if Alternate II is also being used:

(7) The Contractor shall be liable for the reasonable costs of disassembly and/or reassembly of larger items when it is necessary to remove the supplies to be inspected and/or returned for correction or replacement.

52.246-20 Warranty of Services.

As prescribed in 46.710(d), insert a clause substantially as follows:

WARRANTY OF SERVICES (MAY 2001)

(a) *Definition.* “Acceptance,” as used in this clause, 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 and identified supplies, or approves specific services, as partial or complete performance of the contract.

(b) Notwithstanding inspection and acceptance by the Government or any provision concerning the conclusiveness thereof, the Contractor warrants that all services performed under this contract will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this contract. The Contracting Officer shall give written notice of any defect or nonconformance to the Contractor _____ [*Contracting Officer shall insert the specific period of time in which notice shall be given to the Contractor; e.g., “within 30 days from the date of acceptance by the Government,”; within 1000 hours of use by the Government;” or other specified event whose occurrence will terminate the period of notice, or combination of any applicable events or period of time*]. This notice shall state either—

(1) That the Contractor shall correct or reperform any defective or nonconforming services; or

(2) That the Government does not require correction or reperformance.

(c) If the Contractor is required to correct or reperform, it shall be at no cost to the Government, and any services corrected or reperformed by the Contractor shall be subject to this clause to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by contract or otherwise, correct or replace with similar services and charge to the Contractor the cost occasioned to the Government thereby, or make an equitable adjustment in the contract price.

(d) If the Government does not require correction or reperformance, the Contracting Officer shall make an equitable adjustment in the contract price.

(End of clause)

52.246-21 Warranty of Construction.

As prescribed in 46.710(e)(1), the contracting officer may insert a clause substantially as follows in solicitations and contracts when a fixed-price construction contract (see 46.705(c)) is contemplated, and the use of a warranty clause has been approved under agency procedures:

WARRANTY OF CONSTRUCTION (MAR 1994)

(a) In addition to any other warranties in this contract, the Contractor warrants, except as provided in paragraph (i) of this clause, that work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier.

(b) This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the Government takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the Government takes possession.

(c) The Contractor shall remedy at the Contractor’s expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor’s expense any damage to Government-owned or controlled real or personal property, when that damage is the result of—

(1) The Contractor’s failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(d) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor’s warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(e) The Contracting Officer shall notify the Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.

(f) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, the Government shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage at the Contractor’s expense.

(g) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall—

(1) Obtain all warranties that would be given in normal commercial practice;

(2) Require all warranties to be executed, in writing, for the benefit of the Government, if directed by the Contracting Officer; and

(3) Enforce all warranties for the benefit of the Government, if directed by the Contracting Officer.

(h) In the event the Contractor's warranty under paragraph (b) of this clause has expired, the Government may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(i) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Government nor for the repair of any damage that results from any defect in Government-furnished material or design.

(j) This warranty shall not limit the Government's rights under the Inspection and Acceptance clause of this contract with respect to latent defects, gross mistakes, or fraud.

(End of clause)

Alternate I (Apr 1984). If the Government specifies in the contract the use of any equipment by "brand name and model," the contracting officer may add a paragraph substantially the same as the following paragraph (k) to the basic clause:

(k) Defects in design or manufacture of equipment specified by the Government on a "brand name and model" basis, shall not be included in this warranty. In this event, the Contractor shall require any subcontractors, manufacturers, or suppliers thereof to execute their warranties, in writing, directly to the Government.

52.246-22 [Reserved]

52.246-23 Limitation of Liability.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) of this clause, and except for remedies expressly provided elsewhere in this contract, the Contractor shall not be liable for loss of or damage to property of the Government (excluding the supplies delivered under this contract) that—

(1) Occurs after Government acceptance of the supplies delivered under this contract; and

(2) Results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(End of clause)

52.246-24 Limitation of Liability—High-Value Items.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—HIGH-VALUE ITEMS (FEB 1997)

(a) Except as provided in paragraphs (b) through (e) of this clause, and notwithstanding any other provision of this contract, the Contractor shall not be liable for loss of or damage to property of the Government (including the supplies delivered under this contract) that—

(1) Occurs after Government acceptance of the supplies delivered under this contract; and

(2) Results from any defects or deficiencies in the supplies.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, the supplies results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through purchase or use of the supplies required to be delivered under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance

of, and resulting from any defects or deficiencies in, the supplies delivered under this contract.

(d)(1) This clause does not diminish the Contractor's obligations, to the extent that they arise otherwise under this contract, relating to correction, repair, replacement, or other relief for any defect or deficiency in supplies delivered under this contract.

(2) Unless this is a cost-reimbursement contract, if loss or damage occurs and correction, repair, or replacement is not feasible or desired by the Government, the Contractor shall, as determined by the Contracting Officer—

(i) Pay the Government the amount it would have cost the Contractor to make correction, repair, or replacement before the loss or damage occurred;

(ii) Provide other equitable relief.

(e) This clause shall not limit or otherwise affect the Government's rights under clauses, if included in this contract, that cover—

- (1) Warranty of technical data;
- (2) Ground and flight risks or aircraft flight risks; or
- (3) Government property.

(End of clause)

Alternate I (Apr 1984). If the contract is for both high-value items and other end items, the contracting officer shall identify the high-value items by line item and insert the following preamble before paragraph (a):

(This clause shall apply only to those items identified in this contract as being subject to this clause.)

52.246-25 Limitation of Liability—Services.

As prescribed in 46.805, insert the following clause:

LIMITATION OF LIABILITY—SERVICES (FEB 1997)

(a) Except as provided in paragraphs (b) and (c) of this clause, and except to the extent that the Contractor is

expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that—

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) of this clause shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of—

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

(End of clause)

52.247-1 Commercial Bill of Lading Notations.

As prescribed in 47.104-4, insert the following clause:

COMMERCIAL BILL OF LADING NOTATIONS (APR 1984)

If the Contracting Officer authorizes supplies to be shipped on a commercial bill of lading and the Contractor will be reimbursed these transportation costs as direct allowable costs, the Contractor shall ensure before shipment is made that the commercial shipping documents are annotated with either of the following notations, as appropriate:

(a) If the Government is shown as the consignor or the consignee, the annotation shall be:

Transportation is for the _____ [name the specific agency] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to, and shall be reimbursed by, the Government.

(b) If the Government is not shown as the consignor or the consignee, the annotation shall be:

Transportation is for the _____ [name the specific agency] and the actual total transportation charges paid to the carrier(s) by the consignor or consignee shall be reimbursed by the Government, pursuant to cost-reimbursement contract No. _____. This may be confirmed by contacting _____ [Name and address of the contract administration office listed in the contract].

(End of clause)

52.247-2 Permits, Authorities, or Franchises.

As prescribed in 47.207-1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (JAN 1997)

(a) The offeror does , does not , hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

(Name of regulatory body)

(Authorization No.)

(b) The offeror shall furnish to the Government, if requested, copies of the authorization before moving the material under any contract awarded. In addition, the offeror shall, at the offeror's expense, obtain and maintain any permits, franchises, licenses, and other authorities issued by State and local governments.

(End of clause)

52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.

As prescribed in 47.207-1(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices:

CAPABILITY TO PERFORM A CONTRACT FOR THE RELOCATION OF A FEDERAL OFFICE (APR 1984)

(a) If the move specified in this contract is to be performed by the Contractor as a carrier within the borders of more than one State, including the District of Columbia, (*i.e.*, an interstate move), the Contractor shall have obtained and hold appropriate and current operating authority from the Interstate Commerce Commission.

(b)(1) If the move specified in this contract is to be performed by the Contractor as a carrier wholly within the borders of one State or the District of Columbia (*i.e.*, an intrastate move), the Contractor shall, when required by the State, or the District of Columbia, in which the move is to take place, have obtained and hold appropriate and current operating authority from that jurisdiction in the form of a certificate, permit, or equivalent license to operate.

(2) If no authority to operate is required by the State or the District of Columbia, the Contractor as carrier shall maintain facilities, equipment, and a business address within the jurisdiction in which the move is to take place. However, if the move is to originate and/or terminate within an area of one State, or the District of Columbia, that comprises a part of a recognized Commercial Zone (see 49 CFR 1048) the boundaries of which encompass portions of more than one State or the District of Columbia, it shall be sufficient if the Contractor as carrier maintains facilities, equipment, and a business address within the Commercial Zone and holds appropriate operating authority, if required, from the jurisdiction within which the Contractor maintains the facilities, equipment, and business address.

(c) If the move specified in this contract will not be performed by the Contractor as carrier, it must be performed for the Contractor by a carrier operating under a subcontract with the Contractor. In this case, the Contractor shall not be subject to the requirements of paragraphs (a) and (b) of this clause, but shall be responsible for requiring and ensuring that the subcontractor carrier complies with those requirements in every respect.

(d) The Contractor shall be in compliance with the applicable requirements of this clause at least 14 days before the date on which performance of the contract shall commence under the terms specified; except that, if the period from the date of award of the contract to the date that performance shall commence is less than 28 days, the Contractor shall comply

with the applicable requirements of this clause midway between the time of award and the time of commencement of performance.

(End of clause)

Alternate I (Apr 1984). If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or Commercial zone, delete paragraph (b) of the basic clause and redesignate the remaining paragraphs "(b) and (c)." In the 6th line of the new paragraph (b), delete the words "paragraphs (a) and (b) above" and replace them with "paragraph (a) of this clause."

52.247-4 Inspection of Shipping and Receiving Facilities.

As prescribed in 47.207-1(c), insert the following provision in solicitations for transportation or for transportation-related services when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids:

INSPECTION OF SHIPPING AND RECEIVING FACILITIES (APR 1984)

(a) Offerors are urged to inspect the shipping and receiving facilities where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance.

(b) Site visits have been scheduled as follows:

(Locations)

(Dates)

(Times)

(c) For further information offerors may contact:

(Name)

(Telephone)

(End of provision)

52.247-5 Familiarization with Conditions.

As prescribed in 47.207-1(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services to ensure that offerors become familiar with conditions under which and where the services will be performed:

FAMILIARIZATION WITH CONDITIONS (APR 1984)

The offeror shall become familiar with all available information regarding difficulties that may be encountered and the

conditions, including safety precautions, under which the work must be accomplished under the contract. The offeror shall not be relieved from assuming all responsibility for properly estimating the difficulties and the cost of performing the services required in this contract because the offeror failed to investigate the conditions or to become acquainted with all information concerning the services to be performed.

(End of clause)

52.247-6 Financial Statement.

As prescribed in 47.207-1(e), insert the following provision in solicitations for transportation or for transportation-related services to ensure that offerors are prepared to furnish financial statements:

FINANCIAL STATEMENT (APR 1984)

The offeror shall, upon request, promptly furnish the Government with a current certified statement of the offeror's financial condition and such data as the Government may request with respect to the offeror's operations. The Government will use this information to determine the offeror's financial responsibility and ability to perform under the contract. Failure of an offeror to comply with a request for information will subject the offer to possible rejection on responsibility grounds.

(End of provision)

52.247-7 Freight Excluded.

As prescribed in 47.207-3(d)(2), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when any commodities or types of shipments have been identified for exclusion:

FREIGHT EXCLUDED (APR 1984)

Excluded from the scope of this contract are shipments that can be more advantageously or economically moved via parcel post or small package carrier; shipments of unusual value, explosives and other dangerous articles, household goods, commodities in bulk, commodities injurious or contaminating to other freight; and shipments that the Government may elect to move in Government vehicles.

(End of clause)

52.247-8 Estimated Weights or Quantities Not Guaranteed.

As prescribed in 47.207-3(e)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when weights or quantities are estimates:

ESTIMATED WEIGHTS OR QUANTITIES NOT GUARANTEED
(APR 1984)

The estimated weights or quantities are not a guarantee of actual weights or quantities, as the Government does not guarantee any particular volume of traffic described in this contract. However, to the extent services are required as described in this contract and in accordance with the terms of this contract, orders for these services will be placed with the Contractor.

(End of clause)

52.247-9 Agreed Weight—General Freight.

As prescribed in 47.207-4(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the shipping activity determines the weight of shipments of freight other than household goods or office furniture:

AGREED WEIGHT—GENERAL FREIGHT (APR 1984)

The shipping activity shall determine the weight of each shipment. The weight shall be shown on the covering shipping document and shall be accepted by the Contractor as the agreed weight.

(End of clause)

52.247-10 Net Weight—General Freight.

As prescribed in 47.207-4(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the weight of shipments of freight other than household goods or office furniture is not known at the time of shipment and the contractor is responsible for determining the net weight of the shipments:

NET WEIGHT—GENERAL FREIGHT (APR 1984)

(a) The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having the empty vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale) from the gross weight of the vehicle (determined by having the loaded vehicle with a full tank of fuel weighed by a certified weighmaster on a certified scale).

(b) The Contractor shall attach the original copies of the empty and loaded weight certificates to the invoice for services.

(End of clause)

52.247-11 Net Weight—Household Goods or Office Furniture.

As prescribed in 47.207-4(b), insert the following clause in contracts for transportation or for transportation-related services when movements of Government employees' house-

hold goods or relocations of Government offices are involved:

NET WEIGHT—HOUSEHOLD GOODS OR OFFICE
FURNITURE (APR 1984)

(a) *Net weight—full loads.* The net weight of the shipment shall be determined by deducting the tare weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the empty vehicle with all blankets, pads, chains, dollies, hand trucks, and all other necessary equipment inside the vehicle) from the gross weight of the vehicle (determined by having a certified weighmaster weigh on a certified scale the fully loaded vehicle before arrival at destination).

(b) *Net weight—part loads.* The net weight of the first part load shall be determined in the same manner as specified for a full load. The net weight of the second part load shall be determined by using as the tare weight of the vehicle the gross weight of the vehicle containing the first part load and deducting this weight from the new gross weight (determined by having the loaded vehicle weighed again, in the same manner as specified for the full load). The same procedure shall apply for each succeeding part load.

(c) *Weight certificates.* The contractor shall attach the original copy of each weight certificate to the invoice for services.

(End of clause)

52.247-12 Supervision, Labor, or Materials.

As prescribed in 47.207-5(b), insert a clause substantially as follows in solicitations and contracts for transportation or for transportation-related services when the contractor is required to furnish supervision, labor, or materials:

SUPERVISION, LABOR, OR MATERIALS (APR 1984)

The Contractor shall furnish adequate supervision, labor, materials, supplies, and equipment necessary to perform all the services contemplated under this contract in an orderly, timely, and efficient manner.

(End of clause)

52.247-13 Accessorial Services—Moving Contracts.

As prescribed in 47.207-5(c), insert a clause substantially as follows in solicitations and contracts for the transportation of household goods or office furniture:

ACCESSORIAL SERVICES—MOVING CONTRACTS
(APR 1984)

(a) *Packing and/or crating and padding.* The Contractor shall—

(1) Perform all of the packing and/or crating and padding necessary for the protection of the goods to be transported;

(2) Furnish packing containers, including, but not limited to, barrels, boxes, wardrobes, and cartons; all crating materials; and all padding materials and equipment;

(3) Furnish or cause to be furnished, when necessary, padding or other protective material for the interior of the buildings, including elevators, from and to which the property will be moved under this contract; and

(4) Ensure that all containers and materials are clean and of quality sufficient for protection of the goods.

(b) *Disassembling and reassembling of property and servicing appliances.* The disassembling of property; *e.g.*, beds and sectional bookcases, and the preparing of appliances; *e.g.*, washers, driers, and record players, for shipment shall be performed by the Contractor. The Contractor shall reassemble the property and service the appliances upon delivery at the new location.

(c) *Unpacking and/or uncrating and placement of property.* The Contractor shall unpack and/or uncrate all property that was packed and/or crated for movement under this contract. The Contractor shall also place the property in the new location as instructed by the owner of the property or authorized representative, and shall remove all packing and similar or related material from the premises as requested by the owner.

(End of clause)

52.247-14 Contractor Responsibility for Receipt of Shipment.

As prescribed in 47.207-5(d), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR RESPONSIBILITY FOR RECEIPT OF SHIPMENT (APR 1984)

The Contractor shall diligently count and examine all goods tendered for shipment, receipt for them, and make appropriate written exception for any goods not in apparent good order.

(End of clause)

52.247-15 Contractor Responsibility for Loading and Unloading.

As prescribed in 47.207-5(e), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for loading and unloading shipments:

CONTRACTOR RESPONSIBILITY FOR LOADING AND UNLOADING (APR 1984)

(a)(1) Unless otherwise specified in this contract to cover store-door or inside delivery, the Contractor shall load and

unload shipments at no additional expense to the Government.

(2) The Government or its agent will place or receive freight at the tailgate of the Contractor's vehicle. Tailgate delivery, for purposes of this contract, is defined as that which enables a forklift truck or similar equipment, with operator only, to place or remove cargo from the tailgate of the Contractor's vehicle.

(b) If loading is the responsibility of the Contractor, the Contractor shall perform all shoring, blocking, and bracing. The Contractor shall provide dunnage at the Contractor's expense.

(End of clause)

52.247-16 Contractor Responsibility for Returning Undelivered Freight.

As prescribed in 47.207-5(f), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the contractor is responsible for returning undelivered freight:

CONTRACTOR RESPONSIBILITY FOR RETURNING UNDELIVERED FREIGHT (APR 1984)

(a) When, through no fault of the Contractor, a shipment cannot be delivered, the Contractor shall contact the shipper for disposition instructions. If the shipment is ordered returned to the origin point, the charges assessed for the return trip shall be the same as the charges assessed for the outbound trip. The shipper shall maintain a record of the goods that, through no fault of the Contractor, could not be delivered and are returned to the shipper. If, at a future date, the returned goods are determined to be related to a claim against the Contractor, the claim will be adjusted accordingly.

(b) When, through the fault of the Contractor, a shipment cannot be delivered, the Contractor shall return the shipment to the origin point at no charge to the Government. Any charges incurred for redelivery, which are in excess of the charges that would have been incurred under this contract, shall be for the Contractor's account in accordance with the Default clause of the contract.

(End of clause)

52.247-17 Charges.

As prescribed in 47.207-6(a)(2), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CHARGES (APR 1984)

In no event shall charges under this contract be in excess of charges based on the Contractor's lowest rate available to the general public, or be in excess of charges based on rates

otherwise tendered to the Government by the Contractor for the same type of service.

(End of clause)

52.247-18 Multiple Shipments.

As prescribed in 47.207-6(c)(5)(i), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees at the same destination:

MULTIPLE SHIPMENTS (APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to multiple consignees at the same destination, the rate charged for each shipment shall be the rate applicable to the aggregate weight.

(End of clause)

52.247-19 Stopping in Transit for Partial Unloading.

As prescribed in 47.207-6(c)(5)(ii), insert the following clause in solicitations and contracts for transportation or for transportation-related services when multiple shipments are tendered at one time to the contractor for transportation from one origin to two or more consignees along the route between origin and last destination:

STOPPING IN TRANSIT FOR PARTIAL UNLOADING
(APR 1984)

When multiple shipments are tendered at one time to the Contractor for movement from one origin to two or more consignees along the route between the origin and the last destination, the rate charged shall be the rate applicable to the aggregate weight, plus a charge of \$_____ for each shipment unloaded at an intermediate point en route to the last destination.

(End of clause)

52.247-20 Estimated Quantities or Weights for Evaluation of Offers.

As prescribed in 47.207-6(c)(6), insert the following provision in solicitations for transportation or for transportation-related services when quantities or weights of shipments between each origin and destination are not known, stating estimated quantity or weight for each origin/destination pair:

ESTIMATED QUANTITIES OR WEIGHTS FOR EVALUATION
OF OFFERS (APR 1984)

For the purpose of evaluating offers, and for no other purpose, the following estimated quantities or weights will be

considered as the quantities or weights to be shipped between each origin and destination listed:

ORIGIN	DESTINATION	ESTIMATED QUANTITY OR WEIGHT
_____	_____	_____
_____	_____	_____
_____	_____	_____

(End of provision)

52.247-21 Contractor Liability for Personal Injury and/or Property Damage.

As prescribed in 47.207-7(c), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACTOR LIABILITY FOR PERSONAL INJURY AND/OR
PROPERTY DAMAGE (APR 1984)

(a) The Contractor assumes responsibility for all damage or injury to persons or property occasioned through the use, maintenance, and operation of the Contractor's vehicles or other equipment by, or the action of, the Contractor or the Contractor's employees and agents.

(b) The Contractor, at the Contractor's expense, shall maintain adequate public liability and property damage insurance during the continuance of this contract, insuring the Contractor against all claims for injury or damage.

(c) The Contractor shall maintain Workers' Compensation and other legally required insurance with respect to the Contractor's own employees and agents.

(d) The Government shall in no event be liable or responsible for damage or injury to any person or property occasioned through the use, maintenance, or operation of any vehicle or other equipment by, or the action of, the Contractor or the Contractor's employees and agents in performing under this contract, and the Government shall be indemnified and saved harmless against claims for damage or injury in such cases.

(End of clause)

52.247-22 Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.

As prescribed in 47.207-7(d), insert the following clause in solicitations and contracts for the transportation of freight other than household goods:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE
TO FREIGHT OTHER THAN HOUSEHOLD GOODS (APR 1984)

Except when loss and/or damage arises out of causes beyond the control and without the fault or negligence of the

Contractor, the Contractor shall assume full liability for any and all goods lost and/or damaged in the movement covered by this contract.

(End of clause)

52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.

As prescribed in 47.207-7(e), insert the following clause:

CONTRACTOR LIABILITY FOR LOSS OF AND/OR DAMAGE
TO HOUSEHOLD GOODS (JAN 1991)

(a) Except when loss and/or damage arise out of causes beyond the control and without the fault or negligence of the Contractor, the Contractor shall be liable to the owner for the loss of and/or damage to any article while being—

(1) Packed, picked up, loaded, transported, delivered, unloaded, or unpacked;

(2) Stored in transit; or

(3) Serviced (appliances, etc.) by a third person hired by the Contractor to perform the servicing.

(b) The Contractor shall be liable for loss and/or damage discovered by the owner if written notice of such loss and/or damage is dispatched to the Contractor not later than 75 days following the date of delivery.

(c) The Contractor shall indemnify the owner of the goods at a rate of ___ cents per pound per article.

(End of clause)

52.247-24 Advance Notification by the Government.

As prescribed in 47.207-8(a)(1), insert the following clause in solicitations and contracts for transportation or for transportation-related services when the Government is responsible for notifying the contractor of specific service times or unusual shipments:

ADVANCE NOTIFICATION BY THE GOVERNMENT
(APR 1984)

The Government will notify the Contractor ___ hours in advance of the number of pieces and weight of all normal shipments and the time the shipment will be available for pickup. On other-than-normal shipments, the Government will furnish additional information; *e.g.*, dimension of oversized pieces, as necessary to determine the amount of equipment and/or manpower needed to perform the required services.

(End of clause)

52.247-25 Government-Furnished Equipment With or Without Operators.

As prescribed in 47.207-8(a)(2)(i), insert the following clause in solicitations and contracts for transportation or for

transportation-related services when the Government furnishes equipment with or without operators:

GOVERNMENT-FURNISHED EQUIPMENT WITH OR
WITHOUT OPERATORS (APR 1984)

The Government will provide ___ [*insert equipment; e.g., forklifts*] with or without operators at ___ [*strike out "with" or "without," as applicable, and insert origin, destination, or both*] to assist in ___ [*insert loading, unloading, or both*], when required.

(End of clause)

52.247-26 Government Direction and Marking.

As prescribed in 47.207-8(a)(3), insert the following clause in solicitations and contracts for transportation or for transportation-related services when office relocations are involved:

GOVERNMENT DIRECTION AND MARKING (APR 1984)

The agency being relocated shall tag or mark property, showing floor, room number, and location where property is to be placed in the new building. The agency shall provide sufficient personnel to direct the Contractor's personnel in the placement of the property at destination.

(End of clause)

52.247-27 Contract Not Affected by Oral Agreement.

As prescribed in 47.207-8(b), insert the following clause in solicitations and contracts for transportation or for transportation-related services:

CONTRACT NOT AFFECTED BY ORAL AGREEMENT
(APR 1984)

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. All modifications to the contract must be made in writing by the Contracting Officer or an authorized representative.

(End of clause)

52.247-28 Contractor's Invoices.

As prescribed in 47.207-9(c), insert the following clause in solicitations and contracts for drayage or other term contracts for transportation or for transportation-related services:

CONTRACTOR'S INVOICES (APR 1984)

The Contractor shall submit itemized invoices as instructed by the agency ordering services under this contract. The Contractor shall annotate each invoice with the contract number and other ordering office document identification.

(End of clause)

52.247-29 F.o.b. Origin.

As prescribed in 47.303-1(c), insert the following clause:

F.O.B. ORIGIN (JUNE 1988)

(a) The term “f.o.b. origin,” as used in this clause, means free of expense to the Government delivered—

(1) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipment will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(2) To, and placed on, the carrier’s wharf (at shipside, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(3) To a U.S. Postal Service facility; or

(4) If stated in the solicitation, to any Government designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by 49 CFR Part 372).

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking;

or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*,

(A) “To be converted to a Government bill of lading,” or

(B) “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and

(vi) The signature of the carrier’s agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier’s equipment are not available at the Contractor’s plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier’s facilities are available; subject, however, to the following qualifications:

(1) If the Contractor’s shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor’s expense, and to that extent the contract shall be “f.o.b. destination.”

(2) Notwithstanding paragraph (c)(1) of this clause, if the Contractor’s shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor’s expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

52.247-30 F.o.b. Origin, Contractor’s Facility.

As prescribed in 47.303-2(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. origin, contractor’s facility:

F.O.B. ORIGIN, CONTRACTOR’S FACILITY (APR 1984)

(a) The term “f.o.b. origin, contractor’s facility,” as used in this clause, means free of expense to the Government delivered on board the indicated type of conveyance of the carrier (or of the Government, if specified) at the designated facility, on the named street or highway, in the city, county, and State from which the shipment will be made.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking;

or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*,—

(A) "To be converted to a Government bill of lading," or

(B) "This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government"; and

(vi) The signature of the carrier's agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(End of clause)

52.247-31 F.o.b. Origin, Freight Allowed.

As prescribed in 47.303-3(c), insert the following clause:

F.O.B. ORIGIN, FREIGHT ALLOWED (JUNE 1988)

(a) The term "f.o.b. origin, freight allowed," as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier's wharf (at shipside within reach of the ship's loading tackle when the shipping point is within a port area having water transportation service) or the carrier's freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by 49 CFR Part 372); and

(2) An allowance for freight, based on applicable published tariff rates (or Government rate tenders) between the points specified in the contract, is deducted from the contract price.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier's conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking;

or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier's conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency, or when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*,

(A) “To be converted to a Government bill of lading,” or

(B) “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and

(vi) The signature of the carrier’s agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which the supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier’s equipment are not available at the Contractor’s plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier’s facilities are available; subject, however, to the following qualifications:

(1) If the Contractor’s shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor’s expense, and to that extent the contract shall be “f.o.b. destination.”

(2) Notwithstanding paragraph (c)(1) of this clause, if the Contractor’s shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor’s expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

52.247-32 F.o.b. Origin, Freight Prepaid.

As prescribed in 47.303-4(c), insert the following clause:

F.O.B. ORIGIN, FREIGHT PREPAID (JUNE 1988)

(a) The term “f.o.b. origin, freight prepaid,” as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service (as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier’s wharf (at ship-side, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by 49 CFR Part 372); and

(2) The cost of transportation, ultimately the Government’s obligation, is prepaid by the contractor to the point specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing or marking; or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(5) Prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*,—

(A) “to be converted to a Government bill of lading,” or

(B) “this shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and

(vi) The signature of the carrier’s agent and the date the shipment is received by the carrier;

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency; and

(7) Prepay all freight charges to the extent specified in the contract.

(c) These Contractor responsibilities are specified for performance at the plant or plants at which these supplies are to be finally inspected and accepted, unless the facilities for shipment by carrier’s equipment are not available at the Contractor’s plant, in which case the responsibilities shall be performed f.o.b. the point or points in the same or nearest city where the specified carrier’s facilities are available; subject, however, to the following qualifications:

(1) If the Contractor’s shipping plant is located in the State of Alaska or Hawaii, the Contractor shall deliver the supplies listed for shipment outside Alaska or Hawaii to the port of loading in Alaska or Hawaii, respectively, as specified in the contract, at Contractor’s expense, and to that extent the contract shall be “f.o.b. destination.”

(2) Notwithstanding paragraph (c)(1) of this clause, if the Contractor’s shipping plant is located in the State of Hawaii, and the contract requires delivery to be made by container service, the Contractor shall deliver the supplies, at the Contractor’s expense, to the container yard in the same or nearest city where seavan container service is available.

(End of clause)

52.247-33 F.o.b. Origin, with Differentials.

As prescribed in 47.303-5(c), insert the following clause:

F.O.B. ORIGIN, WITH DIFFERENTIALS (JUNE 1988)

(a) The term “f.o.b. origin, with differentials,” as used in this clause, means—

(1) Free of expense to the Government delivered—

(i) On board the indicated type of conveyance of the carrier (or of the Government, if specified) at a designated point in the city, county, and State from which the shipments will be made and from which line-haul transportation service

(as distinguished from switching, local drayage, or other terminal service) will begin;

(ii) To, and placed on, the carrier’s wharf (at ship-side, within reach of the ship’s loading tackle, when the shipping point is within a port area having water transportation service) or the carrier’s freight station;

(iii) To a U.S. Postal Service facility; or

(iv) If stated in the solicitation, to any Government-designated point located within the same city or commercial zone as the f.o.b. origin point specified in the contract (commercial zones are prescribed by 49 CFR Part 372); and

(2) Differentials for mode of transportation, type of vehicle, or place of delivery as indicated in Contractor’s offer may be added to the contract price.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specification; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Order specified carrier equipment when requested by the Government; or

(ii) If not specified, order appropriate carrier equipment not in excess of capacity to accommodate shipment;

(3) Deliver the shipment in good order and condition to the carrier, and load, stow, trim, block, and/or brace carload or truckload shipment (when loaded by the Contractor) on or in the carrier’s conveyance as required by carrier rules and regulations;

(4) Be responsible for any loss of and/or damage to the goods—

(i) Occurring before delivery to the carrier;

(ii) Resulting from improper packing and marking;

or

(iii) Resulting from improper loading, stowing, trimming, blocking, and/or bracing of the shipment, if loaded by the Contractor on or in the carrier’s conveyance;

(5) Complete the Government bill of lading supplied by the ordering agency or, when a Government bill of lading is not supplied, prepare a commercial bill of lading or other transportation receipt. The bill of lading shall show—

(i) A description of the shipment in terms of the governing freight classification or tariff (or Government rate tender) under which lowest freight rates are applicable;

(ii) The seals affixed to the conveyance with their serial numbers or other identification;

(iii) Lengths and capacities of cars or trucks ordered and furnished;

(iv) Other pertinent information required to effect prompt delivery to the consignee, including name, delivery address, postal address and ZIP code of consignee, routing, etc.;

(v) Special instructions or annotations requested by the ordering agency for commercial bills of lading; *e.g.*, —

(A) “To be converted to a Government bill of lading,” or

(B) “This shipment is the property of, and the freight charges paid to the carrier(s) will be reimbursed by, the Government”; and

(vi) The signature of the carrier’s agent and the date the shipment is received by the carrier; and

(6) Distribute the copies of the bill of lading, or other transportation receipts, as directed by the ordering agency.

(c)(1) It may be advantageous to the offeror to submit f.o.b. origin prices that include only the lowest cost to the Contractor for loading of shipment at the Contractor’s plant or most favorable shipping point. The cost beyond that plant or point of bringing the supplies to the place of delivery and the cost of loading, blocking, and bracing on the type vehicle specified by the Government at the time of shipment may exceed the offeror’s lowest cost when the offeror ships for the offeror’s account. Accordingly, the offeror may indicate differentials that may be added to the offered price. These differentials shall be expressed as a rate in cents for each 100 pounds (CWT) of the supplies for one or more of the options under this clause that the Government may specify at the time of shipment.

(2) These differential(s) will be considered in the evaluation of offers to determine the lowest overall cost to the Government. If, at the time of shipment, the Government specifies (normally on a Government bill of lading) a mode of transportation, type of vehicle, or place of delivery for which the offeror has set forth a differential, the Contractor shall include the total of such differential costs (the applicable differential multiplied by the actual weight on the Government bill of lading) as a separate reimbursable item on the Contractor’s invoice for the supplies.

(3) The Government shall have the option of performing or arranging at its own expense any transportation from Contractor’s shipping plant or point to carrier’s facility at the time of shipment and, whenever this option is exercised, the Government shall make no reimbursement based on a quoted differential.

(4) Offeror’s differentials in cents for each 100 pounds for optional mode of transportation, types of vehicle, transportation within a mode, or place of delivery, specified by the Government at the time of shipment and not included in the f.o.b. origin price indicated in the Schedule by the offeror, are as follows:

_____ (carload, truckload, less-load,
_____ wharf, flatcar, driveway, etc.)

(End of clause)

52.247-34 F.o.b. Destination.

As prescribed in 47.303-6(c), insert the following clause:

F.O.B. DESTINATION (NOV 1991)

(a) The term “f.o.b. destination,” as used in this clause, means—

(1) Free of expense to the Government, on board the carrier’s conveyance, at a specified delivery point where the consignee’s facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

(2) Supplies shall be delivered to the destination consignee’s wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The Government shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or “constructive placement” as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the Government acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including “piggyback”) is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for “heavy or bulky freight.” When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the contractor uses rail carrier or freight forwarded for less than carload shipments, the contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

52.247-35 F.o.b. Destination, Within Consignee's Premises.

As prescribed in 47.303-7(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. destination, within consignee's premises:

F.O.B. DESTINATION, WITHIN CONSIGNEE'S PREMISES
(APR 1984)

(a) The term "f.o.b. destination, within consignee's premises," as used in this clause, means free of expense to the Government delivered and laid down within the doors of the consignee's premises, including delivery to specific rooms within a building if so specified.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

(2) Prepare and distribute commercial bills of lading;

(3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

(5) Furnish a delivery schedule and designate the mode of delivering carrier; and

(6) Pay and bear all charges to the specified point of delivery.

(End of clause)

52.247-36 F.a.s. Vessel, Port of Shipment.

As prescribed in 47.303-8(c), insert the following clause in solicitations and contracts when the delivery term is f.a.s. vessel, port of shipment:

F.A.S. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.a.s. vessel, port of shipment," as used in this clause, means free of expense to the Government delivered alongside the ocean vessel and within reach of its loading tackle at the specified port of shipment.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition alongside the ocean vessel and within reach of its loading tackle, at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges, including transportation costs, wharfage, handling, and heavy lift charges, if necessary, up to this point;

(3) Provide a clean dock or ship's receipt;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point specified in the contract; and

(5) At the Government's request and expense, assist obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(End of clause)

52.247-37 F.o.b. Vessel, Port of Shipment.

As prescribed in 47.303-9(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. vessel, port of shipment:

F.O.B. VESSEL, PORT OF SHIPMENT (APR 1984)

(a) The term "f.o.b. vessel, port of shipment," as used in this clause, means free of expense to the Government loaded, stowed, and trimmed on board the ocean vessel at the specified port of shipment.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment on board the ocean vessel in good order and condition on the date or within the period fixed; and

(ii) Pay and bear all charges incurred in placing the shipment actually on board;

(3) Provide a clean ship's receipt or on-board ocean bill of lading;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment on board the ocean vessel; and

(5) At the Government's request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(End of clause)

52.247-38 F.o.b. Inland Carrier, Point of Exportation.

As prescribed in 47.303-10(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland carrier, point of exportation:

F.O.B. INLAND CARRIER, POINT OF EXPORTATION
(APR 1984)

(a) The term “f.o.b. inland carrier, point of exportation,” as used in this clause, means free of expense to the Government, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2) Prepare and distribute commercial bills of lading;

(3)(i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

(5) At the Government’s request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

(End of clause)

52.247-39 F.o.b. Inland Point, Country of Importation.

As prescribed in 47.303-11(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. inland point, country of importation:

F.O.B. INLAND POINT, COUNTRY OF IMPORTATION
(APR 1984)

(a) The term “f.o.b. inland point, country of importation,” as used in this clause, means free of expense to the Government, on board the indicated type of conveyance of the carrier, delivered to the specified inland point where the consignee’s facility is located.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2)(i) Deliver, in or on the inland carrier’s conveyance, the shipment in good order and condition to the specified inland point where the consignee’s facility is located; and

(ii) Pay and bear all applicable charges incurred up to the point of delivery, including transportation costs; export,

import, or other fees or taxes; costs of landing; wharfage costs; customs duties and costs of certificates of origin; consular invoices; and other documents that may be required for importation; and

(3) Be responsible for any loss of and/or damage to the goods until their arrival on or in the carrier’s conveyance at the specified inland point.

(End of clause)

52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.

As prescribed in 47.303-12(c), insert the following clause in solicitations and contracts when the delivery term is ex dock, pier, or warehouse, port of importation:

EX DOCK, PIER, OR WAREHOUSE, PORT OF IMPORTATION
(APR 1984)

(a) The term “ex dock, pier, or warehouse, port of importation,” as used in this clause, means free of expense to the Government delivered on the designated dock or pier or in the warehouse at the specified port of importation.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods;

(2)(i) Deliver shipment in good order and condition; and

(ii) Pay and bear all charges up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; costs of wharfage and landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(3) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery specified in the contract.

(End of clause)

52.247-41 C.& f. Destination.

As prescribed in 47.303-13(c), insert the following clause in solicitations and contracts when the delivery term is c.& f. destination:

C.&F. DESTINATION (APR 1984)

(a) The term “c.& f. destination,” as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation paid by the Contractor.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2)(i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery; and

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination.

(End of clause)

52.247-42 C.i.f. Destination.

As prescribed in 47.303-14(c), insert the following clause in solicitations and contracts when the delivery term is c.i.f. destination:

C.I.F. DESTINATION (APR 1984)

(a) The term "c.i.f. destination," as used in this clause, means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the Contractor.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements;

(2)(i) Deliver the shipment in good order and condition; and

(ii) Pay and bear all applicable charges to the point of destination specified in the contract, including transportation costs and export taxes or other fees or charges levied because of exportation;

(3) Obtain and dispatch promptly to the Government clean on-board ocean bills of lading to the specified point of destination;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery;

(5) At the Government's request and expense, provide certificates of origin, consular invoices, or any other documents issued in the country of origin or of shipment, or both, that may be required for importation into the country of destination; and

(6) Obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government Contracting Officer.

(End of clause)

52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.

As prescribed in 47.303-15(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of exportation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF EXPORTATION (APR 1984)

(a) The term "f.o.b. designated air carrier's terminal, point of exportation," as used in this clause, means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier's terminal specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

(2)(i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and

(ii) Pay and bear all applicable charges up to this point;

(3) Provide a clean Government bill of lading and/or air waybill;

(4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and

(5) At the Government's request and expense, assist in obtaining the documents required for the purpose of exportation.

(End of clause)

52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.

As prescribed in 47.303-16(c), insert the following clause in solicitations and contracts when the delivery term is f.o.b. designated air carrier's terminal, point of importation:

F.O.B. DESIGNATED AIR CARRIER'S TERMINAL, POINT OF
IMPORTATION (APR 1984)

(a) The term "f.o.b. designated air carrier's terminal, point of importation," as used in this clause, means free of expense to the Government delivered to the air carrier's terminal at the point of importation specified in the contract.

(b) The Contractor shall—

(1)(i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;

(2) Prepare and distribute bills of lading or air waybills;

(3)(i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and

(ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and

(4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.

(End of clause)

52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.

As prescribed in 47.305-2(b), insert the following provision in solicitations when offers are solicited on the basis of both f.o.b. origin and f.o.b. destination:

F.O.B. ORIGIN AND/OR F.O.B. DESTINATION EVALUATION
(APR 1984)

Offers are invited on the basis of both f.o.b. origin and f.o.b. destination, and the Government will award on the basis the Contracting Officer determines to be most advantageous to the Government. An offer on the basis of f.o.b. origin only or f.o.b. destination only is acceptable, but will be evaluated only on the basis submitted.

(End of provision)

52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.

As prescribed in 47.305-3(b)(4)(ii), insert the following provision in f.o.b. origin solicitations when price evaluation for shipments from various shipping points is contemplated:

SHIPPING POINT(S) USED IN EVALUATION OF F.O.B.
ORIGIN OFFERS (APR 1984)

(a) If more than one shipping point or plant is designated by the offeror and the offeror fails to indicate the quantity per shipping point or plant before bid opening, the Government will evaluate the offer on the basis of delivery of the entire quantity from the point or plant where cost of transportation is most favorable to the Government.

(b) If the offeror, before bid opening (or the closing date specified for receipt of offers) fails to indicate any shipping point or plant, the Government will evaluate the offer on the basis of delivery from the plant at which the contract will be performed, as indicated in the offer. If no plant is indicated in the offer, the offer will be evaluated on the basis of delivery from the Contractor's business address indicated in the offer.

(c) If the offeror uses a shipping point other than that which has been used by the Government as a basis for the evaluation of offers, any increase of transportation costs shall be borne by the Contractor and any savings shall revert to the Government.

(End of provision)

52.247-47 Evaluation—F.o.b. Origin.

As prescribed in 47.305-3(f)(2), insert the following provision. When it is appropriate to use methods other than land transportation in evaluating offers; *e.g.*, air, pipeline, barge, or ocean tanker, the provision shall be modified accordingly.

EVALUATION—F.O.B. ORIGIN (APR 1984)

Land methods of transportation by regulated common carrier are the normal means of transportation used by the Government for shipment within the United States (excluding Alaska and Hawaii). Accordingly, for the purpose of evaluating offers, only these methods will be considered in establishing the cost of transportation between offeror's shipping point and destination (tentative or firm, whichever is applicable) in the United States (excluding Alaska and Hawaii). This transportation cost will be added to the offer price in determining the overall cost of the supplies to the Government. When tentative destinations are indicated, they will be used only for evaluation purposes, the Government having the right to use any other means of transportation or any other destination at the time of shipment.

(End of provision)

52.247-48 F.o.b. Destination—Evidence of Shipment.

As prescribed in 47.305-4(c), insert the following clause:

F.O.B. DESTINATION—EVIDENCE OF SHIPMENT
(FEB 1999)

(a) If this contract is awarded on a free on board (f.o.b.) destination basis, the Contractor—

(1) Shall not submit an invoice for payment until the supplies covered by the invoice have been shipped to the destination; and

(2) Shall retain, and make available to the Government for review as necessary, the following evidence of shipment documentation for a period of 3 years after final payment under the contract:

(i) If transportation is accomplished by common carrier, a signed copy of the commercial bill of lading for the supplies covered by the Contractor's invoice, indicating the carrier's intent to ship the supplies to the destination specified in the contract.

(ii) If transportation is accomplished by parcel post, a copy of the certificate of mailing.

(iii) If transportation is accomplished by other than common carrier or parcel post, a copy of the delivery document showing receipt at the destination specified in the contract.

(b) The Contractor is not required to submit evidence of shipment documentation with its invoice.

(End of clause)

52.247-49 Destination Unknown.

As prescribed in 47.305-5(b)(2), insert the following provision in solicitations when destinations are tentative and only for the purpose of evaluating offers:

DESTINATION UNKNOWN (APR 1984)

For the purpose of evaluating offers and for no other purpose, the final destination(s) for the supplies will be considered to be as follows: _____

(End of provision)

52.247-50 No Evaluation of Transportation Costs.

As prescribed in 47.305-5(c)(1), insert the following provision in solicitations when exact destinations are not known and it is impractical to establish tentative or general delivery places for the purpose of evaluating transportation costs:

NO EVALUATION OF TRANSPORTATION COSTS (APR 1984)

Costs of transporting supplies to be delivered under this contract will not be an evaluation factor for award.

(End of provision)

52.247-51 Evaluation of Export Offers.

As prescribed in 47.305-6(e), insert the following provision:

EVALUATION OF EXPORT OFFERS (JAN 2001)

(a) *Port handling and ocean charges—other than DOD water terminals.* Port handling and ocean charges in tariffs on file with the Bureau of Domestic Regulation, Federal Maritime Commission, or other appropriate regulatory authorities as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment will be used in the evaluation of offers.

(b) *F.o.b. origin, transportation under Government bill of lading.* (1) Offers shall be evaluated and awards made on the basis of the lowest laid down cost to the Government at the overseas port of discharge, via methods and ports compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the f.o.b. origin price of the item, shall be the inland transportation costs from the point of origin in the United States to the port of loading, port handling charges at the port of loading, and ocean shipping costs from the United States port of loading (see paragraph (d) of this clause) to the overseas port of discharge. The Government may designate the mode of routing of shipment and may load from other than those ports specified for evaluation purposes.

(2) Offers shall be evaluated on the basis of shipment through one of the ports set forth in paragraph (d) of this clause to the overseas port of discharge. Evaluation shall be made on the basis of shipment through the port that will result in the lowest cost to the Government.

(3) Ports of loading shall be considered as destinations within the meaning of the term "f.o.b. destination" as that term is used in the F.o.b. Origin clause of this contract.

(c) *F.o.b. port of loading with inspection and acceptance at origin.* (1) Offers shall be evaluated on the basis of the lowest laid down cost to the Government at the overseas port of discharge via methods compatible with required delivery dates and conditions affecting transportation known at the time of evaluation. Included in this evaluation, in addition to the price to the United States port of loading (see paragraph (c)(2) of this clause), shall be the port handling charges at the port of loading and the ocean shipping cost from the port of loading (see paragraph (d) of this clause) to the overseas port of discharge.

(2) Unless offers are applicable only to f.o.b. origin delivery under Government bills of lading (see paragraph (b) of this provision), offerors shall designate below at least one of the ports of loading listed in paragraph (d) of this clause as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: _____
 [Offerors insert at least one of the ports listed in paragraph (d) of this clause.]

(d) *Ports of loading for evaluation of offers.* Terminals to be used by the Government in evaluating offers are as follows: (For the information of the offerors, ocean and port handling charges are set forth if the terminal named is a DOD water terminal.)

PORTS/ TERMINALS OF LOADING	COMBINED OCEAN AND PORT HANDING CHARGES TO (INDICATE COUNTRY)	UNIT OF MEASURE: I.E., METRIC TON, MEASUREMENT TON, CUBIC FOOT, ETC.
_____	_____	_____
_____	_____	_____
_____	_____	_____

(e) *Ports of loading nominated by offeror.* The ports of loading named in paragraph (d) of this clause are considered by the Government to be appropriate for this solicitation due to their compatibility with methods and facilities required to handle the cargo and types of vessels and to meet the required overseas delivery dates. Notwithstanding the foregoing, offerors may nominate additional ports of loading that the offeror considers to be more favorable to the Government. The Government may disregard such nominated ports if, after considering the quantity and nature of the supplies concerned, the requisite cargo handling capability, the available sailings on U.S.-flag vessels, and other pertinent transportation factors, it determines that use of the nominated ports is not compatible with the required overseas delivery date. United States Great Lakes ports of loading may be considered in the evaluation of offers only for those items scheduled in this provision for delivery during the ice-free or navigable period as proclaimed by the authorities of the St. Lawrence Seaway (normal period is between April 15 and November 30 annually). All ports named, including those nominated by offerors and determined to be eligible as provided in this provision, shall be considered in evaluating all offers received in order to establish the lowest laid down cost to the Government at the overseas port of discharge. All determinations shall be based on availability of ocean services by U.S.-flag vessels only. Additional U.S. port(s) of loading nominated by offeror, if any: _____

(f) *Price basis.* Offeror shall indicate whether prices are based on—

Paragraph (b), f.o.b. origin, transportation by GBL to port listed in paragraph (d);

Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d));

Paragraph (e), f.o.b. origin, transportation by GBL to port nominated in paragraph (e); and/or

Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(End of provision)

Alternate I (Feb 1995). When the CONUS ports of export are DOD water terminals, delete paragraph (a) from the basic provision and substitute for it the following paragraph (a):

(a) *Port handling and ocean charges—DOD water terminals.* The port handling and ocean charges are set forth in paragraph (d) of this provision for the information of offerors and are current as of the time of issuance of the solicitation. For evaluation of offers, the Government will use the port handling and ocean charges made available by the Directorate of International Traffic, Military Traffic Management Command rate information letters, on file as of the date of bid opening (or the closing date specified for receipt of offers) and which will be effective for the date of the expected initial shipment.

Alternate II (Apr 1984). When offers are solicited on an f.o.b. origin only basis, delete paragraphs (c) and (f) from the basic provision, but do not redesignate the ensuing paragraphs. Add the following basic paragraph (g) to the provision:

(g) Paragraphs (c) and (f) have been deleted but ensuing paragraphs have not been redesignated.

Alternate III (Apr 1984). When offers are solicited on an f.o.b. destination only basis, delete paragraph (b) from the basic provision but do not redesignate the ensuing paragraphs. Delete paragraph (c)(2) and paragraph (f) from the provision and substitute the following paragraph (c)(2) and paragraph (f). Add paragraph (g) below.

(c)(2) Offerors shall designate below at least one of the ports of loading listed in paragraph (d) below as their place of delivery. Failure to designate at least one of the ports as the point to which delivery will be made by the Contractor may render the offer nonresponsive.

PLACE OF DELIVERY: _____
 [Offerors insert at least one of the ports listed in paragraph (d) below.]

* * * * *

(f) *Price basis.* Offerors shall indicate whether prices are based on—

Paragraph (c), f.o.b. destination (i.e., a port listed in paragraph (d)); or

Paragraph (e), f.o.b. destination (i.e., a port nominated in paragraph (e)).

(g) Paragraph (b) has been deleted, but ensuing paragraphs have not been redesignated.

**52.247-52 Clearance and Documentation Requirements—
Shipments to DOD Air or Water Terminal
Transshipment Points.**

As prescribed in 47.305-6(f)(2), insert the following clause in solicitations and contracts when shipments will be consigned to DOD air or water terminal transshipment points:

CLEARANCE AND DOCUMENTATION REQUIREMENTS—
SHIPMENTS TO DOD AIR OR WATER TERMINAL
TRANSSHIPMENT POINTS (APR 1984)

All shipments to water or air ports for transshipment to overseas destinations are subject to the following requirements unless clearance and documentation requirements have been expressly delegated to the Contractor:

(a) At least 10 days before shipping cargo to a water port, the Contractor shall obtain an Export Release from the Government transportation office for—

(1) Each shipment weighing 10,000 pounds or more; and

(2) Each shipment weighing less than 10,000 pounds; if the cargo either—

(i) Is classified TOP SECRET, SECRET, OR CONFIDENTIAL;

(ii) Will require exclusive use of a motor vehicle;

(iii) Will occupy full visible capacity of a railway car or motor vehicle;

(iv) Is less than a carload or truckload, but will be tendered as a carload or truckload; or

(v) Is to be shipped to an ammunition outloading port for water shipment; or

(3) Each shipment weighing less than 10,000 pounds if the cargo consists of—

(i) Narcotics;

(ii) Perishable biological material;

(iii) Vehicles to be offered for driveaway service;

(iv) Explosives, or other dangerous articles classified as A, B, or C explosives;

(v) Poisons, classes A, B, or C; or

(vi) Radioactive material, as defined in 49 CFR 170-179.

(b) The Contractor is cautioned not to order railway cars or motor vehicles for loading until an Export Release has been received.

(c) If the Contracting Officer directs delivery within a shorter period than 10 days, the Contractor shall advise the transportation office of the date on which the cargo will be ready for shipment.

(d) At least 5 days before shipping cargo to either a water port or an airport (regardless of the weight, security classification, or the commodity description), the Contractor shall provide the Government transportation office the information shown in paragraph (e) of this clause to permit preparation of a Transportation Control and Movement Document (TCMD).

(e) When applying for the Export Release in paragraph (a) of this clause or when providing information for preparation of the TCMD in accordance with paragraph (d) of this clause, the Contractor shall furnish the—

(1) Proposed date or dates of shipment;

(2) Number and type of containers;

(3) Gross weight and cube of the shipment;

(4) Number of cars or trucks that will be involved;

(5) Transportation Control Number(s) (TCN) as required for marking under MIL-STD-129 or Federal Standard 123; and

(6) Proper shipping name as specified in 46 CFR 146.05 for all items classified as dangerous substances as required for marking under MIL-STD-129.

(f) All movement documents (Government or commercial bills of lading or other delivery documents) shall be annotated by the Contractor with the—

(1) Transportation Control Number, Consignor Code of activity directing the shipment; *i.e.*, cognizant contract administration office, purchasing office when contract administration has been retained, or a Contractor specifically delegated MILSTAMP responsibilities in the contract, whichever is appropriate, Consignee Code, and Transportation Priority for each shipment unit;

(2) Export Release Number and valid shipping period, if stated (if expired, the Contractor shall request a renewal); and

(3) Cubic foot measurement of each shipment unit.

(g) All annotations on the movement documents shall be made in the "Description of Articles" space except, on Government bills of lading the Export Release number and shipping period shall be entered in the space entitled "Route Order/Release No."

(h) The Contractor shall—

(1) Mail a copy of the commercial bill of lading or other movement document to the transshipment point; and

(2) Give a copy of the commercial bill of lading or other movement document to the carrier for presentation to the transshipment point with delivery of the shipment.

(End of clause)

52.247-53 Freight Classification Description.

As prescribed in 47.305-9(b)(1), insert the following provision in solicitations when the supplies being acquired are new to the supply system, nonstandard, or modifications of previously shipped items, and different freight classifications may apply:

FREIGHT CLASSIFICATION DESCRIPTION (APR 1984)

Offerors are requested to indicate below the full Uniform Freight Classification (rail) description, or the National Motor Freight Classification description applicable to the supplies, the same as offeror uses for commercial shipment. This

description should include the packing of the commodity (box, crate, bundle, loose, setup, knocked down, compressed, unwrapped, etc.), the container material (fiberboard, wooden, etc.), unusual shipping dimensions, and other conditions affecting traffic descriptions. The Government will use these descriptions as well as other information available to determine the classification description most appropriate and advantageous to the Government. Offeror understands that shipments on any f.o.b. origin contract awarded, as a result of this solicitation, will be made in conformity with the shipping classification description specified by the Government, which may be different from the classification description furnished below.

FOR FREIGHT CLASSIFICATION PURPOSES, OFFEROR DESCRIBES THIS COMMODITY AS _____.

(End of provision)

52.247-54 [Reserved]

52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.

As prescribed in 47.305-12(a)(2), insert the following clause in solicitations and contracts when Government property is to be furnished under a contract and the Government will be responsible for transportation arrangements and costs:

F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY (APR 1984)

(a) Unless otherwise specified in this solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor’s plant. If the Contractor’s plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor’s plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor’s plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor’s plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor’s plant is located, or, if the Contractor’s city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(End of clause)

52.247-56 Transit Arrangements.

As prescribed in 47.305-13(a)(3)(ii), insert the following provision in solicitations when benefits may accrue to the Government because transit arrangements may apply:

TRANSIT ARRANGEMENTS (APR 1984)

The lowest appropriate common carrier transportation costs, including offeror’s through transit rates and charges when applicable, from offeror’s shipping points, via the transit point, to the ultimate destination will be used in evaluating offers.

TRANSIT POINT(S)	DESTINATION(S)
_____	_____
_____	_____

(End of provision)

52.247-57 Transportation Transit Privilege Credits.

As prescribed in 47.305-13(b)(4), insert the following clause in solicitations and contracts when supplies are of such a nature, or when it is the custom of the trade, that offerors may have potential transit credits available and the Government may reduce transportation costs through the use of transit credits:

TRANSPORTATION TRANSIT PRIVILEGE CREDITS (APR 1984)

(a) If the offeror has established with regulated common carriers transit privileges that can be applied to the supplies when shipped from the original source, the offeror is invited to propose to use these credits for shipping the supplies to the designated Government destinations. The offeror will ship

these supplies under commercial bills of lading, paying all remaining transportation charges connected with the shipment, subject to reimbursement by the Government in an amount equal to the remaining charges but not exceeding the amount quoted by the offeror.

(b) After loading on the carrier's equipment and acceptance by the carrier, these shipments under paid commercial bills of lading will move for the account of and at the risk of the Government (unless, pursuant to the Changes clause, the office administering the contract directs use of Government bills of lading).

(c) The amount quoted below by the offeror represents the transportation costs in cents per 100 pounds (freight rate) for full carload/truckload shipments of the supplies from offeror's original source, via offeror's transit plant or point, to the Government destination(s) including the carrier's transit privilege charge, less the applicable transit credit (*i.e.*, the amount (rate) initially paid to the carrier for shipment from original source to offeror's transit plant or point).

(d) The rate per CWT quoted will be used by the Government to evaluate the offered f.o.b. origin price unless a lower rate is applicable on the date of bid opening (or closing date specified for receipt of offers). To have the offer evaluated on this basis, the offeror must insert below the remaining transportation charges that the offeror agrees to pay, including any transit charges, subject to reimbursement by the Government, as explained in this clause, to destinations listed in the Schedule as follows:

RATE PER CWT IN CENTS: _____
TO DESTINATION: _____

(End of clause)

52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.

As prescribed in 47.305-15(a)(2), insert the following clause in solicitations and contracts when supplies may be shipped in carload lots by rail:

LOADING, BLOCKING, AND BRACING OF FREIGHT CAR
SHIPMENTS (APR 1984)

(a) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

(b) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.

(c) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.

(d) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(End of clause)

52.247-59 F.o.b. Origin—Carload and Truckload Shipments.

As prescribed in 47.305-16(a), insert the following clause in solicitations and contracts when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.

F.O.B. ORIGIN—CARLOAD AND TRUCKLOAD SHIPMENTS
(APR 1984)

(a) The Contractor agrees that shipment shall be made in carload or truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed, in writing, by the Contracting Officer.

(b) For evaluation purposes, the agreed weight of a carload or truckload shall be the highest applicable minimum weight that will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of the date of bid opening (or the closing date specified for receipt of proposals).

(c) For purposes of actual delivery, the agreed weight of a carload or truckload will be the highest applicable minimum weight that will result in the lowest possible freight rate (or per car charge) on file or published as of date of shipment.

(d) If the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight used for evaluation of offers, the Contractor agrees to ship such scheduled quantity in one shipment.

(e) The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements.

(End of clause)

52.247-60 Guaranteed Shipping Characteristics.

As prescribed in 47.305-16(b)(1), insert the following clause:

GUARANTEED SHIPPING CHARACTERISTICS (DEC 1989)

(a) The offeror is requested to complete paragraph (a)(1) of this clause, for each part or component which is packed or

packaged separately. This information will be used to determine transportation costs for evaluation purposes. If the offeror does not furnish sufficient data in paragraph (a)(1) of this clause, to permit determination by the Government of the item shipping costs, evaluation will be based on the shipping characteristics submitted by the offeror whose offer produces the highest transportation costs or in the absence thereof, by the Contracting Officer's best estimate of the actual transportation costs. If the item shipping costs, based on the actual shipping characteristics, exceed the item shipping costs used for evaluation purposes, the Contractor agrees that the contract price shall be reduced by an amount equal to the difference between the transportation costs actually incurred, and the costs which would have been incurred if the evaluated shipping characteristics had been accurate.

(1) To be completed by the offeror:

- (i) *Type of container:* Wood Box , Fiber Box , Barrel , Reel , Drum , Other (Specify) _____;
- (ii) *Shipping configuration:* Knocked-down , Set-up , Nested , Other (specify) _____;
- (iii) *Size of container:* _____" (Length), x _____" (Width), x _____" (Height) = _____ Cubic Ft;
- (iv) Number of items per container _____ each;
- (v) Gross weight of container and contents _____ Lbs;
- (vi) Palletized/skidded Yes No;
- (vii) Number of containers per pallet/skid _____;
- (viii) Weight of empty pallet bottom/skid and sides _____ Lbs;
- (ix) Size of pallet/skid and contents _____ Lbs Cube _____;
- (x) Number of containers or pallets/skids per railcar _____*
 - (A) Size of railcar _____
 - (B) Type of railcar _____
- (xi) Number of containers or pallets/skids per trailer _____*
 - (A) Size of trailer _____ Ft
 - (B) Type of trailer _____

* Number of complete units (contract line item) to be shipped in carrier's equipment.

(2) To be completed by the Government after evaluation but before contract award:

- (i) Rate used in evaluation _____;
- (ii) Tender/Tariff _____;
- (iii) Item _____.

(b) The guaranteed shipping characteristics requested in paragraph (a)(1) of this clause do not establish actual transportation requirements, which are specified elsewhere in this solicitation. The guaranteed shipping characteristics will be used only for the purpose of evaluating offers and establishing any liability of the successful offeror for increased transportation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.

tation costs resulting from actual shipping characteristics which differ from those used for evaluation in accordance with paragraph (a) of this clause.

(End of clause)

52.247-61 F.o.b. Origin—Minimum Size of Shipments.

As prescribed in 47.305-16(c), insert the following clause in solicitations and contracts when volume rates may apply:

F.O.B. ORIGIN—MINIMUM SIZE OF SHIPMENTS
(APR 1984)

The Contractor agrees that shipment will be made in carload and truckload lots when the quantity to be delivered to any one destination in any delivery period pursuant to the contract schedule of deliveries is sufficient to constitute a carload or truckload shipment, except as may otherwise be permitted or directed in writing by the Contracting Officer. The agreed weight of a carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. In the event the total weight of any scheduled quantity to a destination is less than the highest carload/truckload minimum weight, the Contractor agrees to ship such scheduled quantity in one shipment. The Contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with the above requirements. This liability shall not attach if supplies are oversized or of such nature that they cannot be loaded at the highest minimum weight bracket.

(End of clause)

52.247-62 Specific Quantities Unknown.

As prescribed in 47.305-16(d)(2), insert the following clause in solicitations and contracts when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.

SPECIFIC QUANTITIES UNKNOWN (APR 1984)

(a) For the purpose of evaluating "f.o.b. destination" offers, the Government estimates that the quantity specified will be shipped to the destinations indicated:

ESTIMATED QUANTITY	DESTINATION(S)
_____	_____
_____	_____

(b) If the quantity shipped to each destination varies from the quantity estimated, and if the variation results in a change

in the transportation costs, appropriate adjustment shall be made.

(End of clause)

52.247-63 Preference for U.S.-Flag Air Carriers.

As prescribed in 47.405, insert the following clause:

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S.-flag air carrier," as used in this clause, means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Contractor agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that service by those carriers is available.

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

(End of statement)

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in each subcontract or purchase under this contract that may involve international air transportation.

(End of clause)

52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.

As prescribed in 47.507(a), insert the following clause:

PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (JUNE 2000)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—

- (1) Acquired for a U.S. Government agency account;
- (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
- (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
- (4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c)(1) The Contractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—

(i) The Contracting Officer, and

(ii) The:

Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington DC 20590.

Subcontractor bills of lading shall be submitted through the Prime Contractor.

(2) The Contractor shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if available.

(I) Total ocean freight revenue in U.S. dollars.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to—

- (1) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;
- (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and
- (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the:

Office of Costs and Rates
Maritime Administration
400 Seventh Street, SW
Washington DC 20590
Phone: (202) 366-4610.

(End of clause)

Alternate I (Apr 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies to be furnished under contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(b)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) Except as provided in paragraph (b) of this clause, the Contractor shall use privately owned U.S.-flag commercial vessels, and no others, in the ocean transportation of any supplies to be furnished under this contract.

(b) If such vessels are not available for timely shipment at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels, the Contractor shall notify the Contracting Officer and request (1) authorization to ship in foreign-flag vessels or (2) designation of available U.S.-flag vessels. If the Con-

tractor is authorized in writing by the Contracting Officer to ship the supplies in foreign-flag vessels, the contract price shall be equitably adjusted to reflect the difference in costs of shipping the supplies in privately owned U.S.-flag commercial vessels and in foreign-flag vessels.

Alternate II (Apr 1984). If an applicable statute requires, or if it has been determined under agency procedures, that supplies, materials, or equipment to be shipped under construction contracts shall be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.507(c)), delete paragraphs (a) and (b) from the clause and substitute for them the following paragraphs (a) and (b):

(a) When ocean transportation is required to bring supplies, materials, or equipment to the construction site from the United States either for use in performance of, or for incorporation in, the work called for by this contract, the Contractor shall use privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(b) The Contractor shall not make any shipment exceeding 10 measurement tons (400 cubic feet) by vessels other than privately owned U.S.-flag commercial vessels without (1) notifying the Contracting Officer that U.S.-flag commercial vessels are not available at rates that are fair and reasonable for such vessels and (2) obtaining permission to ship in other vessels. If permission is granted, the contract price shall be equitably adjusted to reflect the difference in cost.

52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.

As prescribed in 47.303-17(f), insert the following clause:

F.O.B. ORIGIN, PREPAID FREIGHT—SMALL PACKAGE SHIPMENTS (JAN 1991)

(a) When authorized by the Contracting Officer, f.o.b. origin freight shipments which do not have a security classification shall move on prepaid commercial bills of lading or other shipping documents to domestic destinations, including air and water terminals. Weight of individual shipments shall be governed by carrier restrictions but shall not exceed 150 pounds by any form of commercial air or 1,000 pounds by other commercial carriers. The Government will reimburse the Contractor for reasonable freight charges.

(b) The Contractor shall annotate the commercial bill of lading as required by the clause of this contract entitled “Commercial Bill of Lading Notations.”

(c) The Contractor shall consolidate prepaid shipments in accordance with procedures established by the cognizant transportation office. The Contractor is authorized to combine Government prepaid shipments with the Contractor's commercial shipments for delivery to one or more consignees and the Government will reimburse its pro rata share of the total freight costs. The Contractor shall provide a copy of the commercial bill of lading promptly to each consignee. Quan-

titles shall not be divided into mailable lots for the purpose of avoiding movement by other modes of transportation.

(d) Transportation charges will be billed as a separate item on the invoice for each shipment made. A copy of the pertinent bill of lading, shipment receipt, or freight bill shall accompany the invoice unless otherwise specified in the contract.

(e) Loss and damage claims will be processed by the Government.

(End of clause)

52.247-66 Returnable Cylinders.

As prescribed in 47.305-17, insert the following clause:

RETURNABLE CYLINDERS (MAY 1994)

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multi-tank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor's property but shall be loaned without charge to the Government for a period of ____ days [*Contracting Officer shall insert number of days*] (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original delivery was f.o.b. destination). The Government shall pay the Contractor a rental of \$_____ [*Contracting Officer shall insert dollar amount for rental, after evaluation of offers*] per cylinder, per day, computed separately for cylinders by type, size, and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows: _____

[*Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.*] These cylinders shall become Government property.

(d) If any lost cylinder is located within _____ [*Contracting Officer shall insert number of days*] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with paragraph (b)

of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.

As prescribed in 47.104-4(c), insert the following clause:

SUBMISSION OF COMMERCIAL TRANSPORTATION BILLS TO THE GENERAL SERVICES ADMINISTRATION FOR AUDIT (JUNE 1997)

(a)(1) In accordance with paragraph (a)(2) of this clause, the Contractor shall submit to the General Services Administration (GSA) for audit, legible copies of all paid freight bills/invoices, commercial bills of lading (CBL's), passenger coupons, and other supporting documents for transportation services on which the United States will assume freight charges that were paid—

(i) By the Contractor under a cost-reimbursement contract; and

(ii) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(2) Cost-reimbursement Contractors shall only submit for audit those CBL's with freight shipment charges exceeding \$50.00. Bills under \$50.00 shall be retained on-site by the Contractor and made available for GSA on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(b) The Contractor shall forward copies of paid freight bills/invoices, CBL's, passenger coupons, and supporting documents as soon as possible following the end of the month, in one package to the:

General Services Administration
ATTN: FWA
1800 F Street, NW
Washington, DC 20405.

The Contractor shall include the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for first-tier subcontractors under a cost-reimbursement contract. If the inclusion of the paid freight bills/invoices, CBL's, passenger coupons, and supporting documents for any subcontractor in the shipment is not practicable, the documents may be forwarded to GSA in a separate package.

(c) Any original transportation bills or other documents requested by GSA shall be forwarded promptly by the Contractor to GSA. The Contractor shall ensure that the name of the contracting agency is stamped or written on the face of the bill before sending it to GSA.

(d) A statement prepared in duplicate by the Contractor shall accompany each shipment of transportation documents.

GSA will acknowledge receipt of the shipment by signing and returning the copy of the statement. The statement shall show—

- (1) The name and address of the Contractor;
- (2) The contract number including any alpha-numeric prefix identifying the contracting office;
- (3) The name and address of the contracting office;

(4) The total number of bills submitted with the statement; and

(5) A listing of the respective amounts paid or, in lieu of such listing, an adding machine tape of the amounts paid showing the Contractor's voucher or check numbers.

(End of clause)

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause:

VALUE ENGINEERING (FEB 2000)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the incentive sharing rates in paragraph (f) of this clause.

(b) *Definitions.*

“Acquisition savings,” as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, which are the net cost reductions on this, the instant contract, and which are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the Contractor's allowable development and implementation costs;

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral savings,” as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency's office that is performing a joint acquisition action.

“Contractor's development and implementation costs,” as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction,” as used in this clause, means the instant unit cost reduction adjusted as the Contracting Officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

(1) Throughout the sharing period, unless the Contracting Officer decides that recalculation is necessary because conditions are significantly different from those previously anticipated; or

(2) To the calculation of a lump-sum payment, which cannot later be revised.

“Government costs,” as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in this contract's cost or price resulting from negative instant contract savings.

“Instant contract,” as used in this clause, means this contract, under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If this is a multiyear contract, the term does not include quantities funded after VECP acceptance. If this contract is a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any Contractor's development or implementation costs) resulting from using the VECP on this, the instant contract. If this is a service contract, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on this contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the cost or price of this contract when the acceptance of a VECP results in an excess of the Contractor's allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base,” as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period,” as used in this clause, means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

“Unit,” as used in this clause, means the item or task to which the Contracting Officer and the Contractor agree the VECP applies.

“Value engineering change proposal (VECP)” means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only;

(ii) In research and development (R&D) end items or R&D test quantities that is due solely to results of previous testing under this contract; or

(iii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (8) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, the effect of the change on the end item's performance, and any pertinent objective test data.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) Identification of the unit to which the VECP applies.

(4) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under the Subcontracts paragraph of this clause.

(5) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(6) A prediction of any effects the proposed change would have on collateral costs to the agency.

(7) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(8) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Contracting Officer, unless this contract states otherwise. If this contract is administered by other than the contracting office, the Contractor shall submit a copy of the VECP simultaneously to the Contracting Officer and to the Administrative Contracting Officer.

(e) *Government action.* (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause and made either before or within a reasonable time after contract performance is completed. Until such a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing rates.* If a VECP is accepted, the Contractor shall share in net acquisition savings according to the percentages shown in the table below. The percentage paid the Contractor depends upon—

(1) This contract's type (fixed-price, incentive, or cost-reimbursement);

(2) The sharing arrangement specified in paragraph (a) of this clause (incentive, program requirement, or a combination as delineated in the Schedule); and

(3) The source of the savings (the instant contract, or concurrent and future contracts), as follows:

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS				
(Figure in Percent)				
CONTRACT TYPE	INCENTIVE (VOLUNTARY)		PROGRAM REQUIREMENT (MANDATORY)	
	Instant Contract Rate	Concurrent and Future Contract Rate	Instant Contract Rate	Concurrent and Future Contract Rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***25	***25	15	15

* The Contracting Office may increase the Contractor's sharing rate to as high as 75 percent for each VECP.
 ** Same sharing arrangement as the contract's profit or fee adjustment formula.
 *** The Contracting Office may increase the Contractor's sharing rate to as high as 50 percent for each VECP.

(g) *Calculating net acquisition savings.* (1) Acquisition savings are realized when (i) the cost or price is reduced on the instant contract, (ii) reductions are negotiated in concurrent contracts, (iii) future contracts are awarded, or (iv) agreement is reached on a lump-sum payment for future contract savings (see paragraph (i)(4) of this clause). Net acquisition savings are first realized, and the Contractor shall be paid a share, when Government costs and any negative instant contract savings have been fully offset against acquisition savings.

(2) Except in incentive contracts, Government costs and any price or cost increases resulting from negative instant contract savings shall be offset against acquisition savings each time such savings are realized until they are fully offset. Then, the Contractor's share is calculated by multiplying net acquisition savings by the appropriate Contractor's percentage sharing rate (see paragraph (f) of this clause). Additional Contractor shares of net acquisition savings shall be paid to the Contractor at the time realized.

(3) If this is an incentive contract, recovery of Government costs on the instant contract shall be deferred and offset against concurrent and future contract savings. The Contractor shall share through the contract incentive structure in savings on the instant contract items affected. Any negative instant contract savings shall be added to the target cost or to the target price and ceiling price, and the amount shall be offset against concurrent and future contract savings.

(4) If the Government does not receive and accept all items on which it paid the Contractor's share, the Contractor shall reimburse the Government for the proportionate share of these payments.

(h) *Contract adjustment.* The modification accepting the VECP (or a subsequent modification issued as soon as possible after any negotiations are completed) shall—

(1) Reduce the contract price or estimated cost by the amount of instant contract savings, unless this is an incentive contract;

(2) When the amount of instant contract savings is negative, increase the contract price, target price and ceiling price, target cost, or estimated cost by that amount;

(3) Specify the Contractor's dollar share per unit on future contracts, or provide the lump-sum payment;

(4) Specify the amount of any Government costs or negative instant contract savings to be offset in determining net acquisition savings realized from concurrent or future contract savings; and

(5) Provide the Contractor's share of any net acquisition savings under the instant contract in accordance with the following:

(i) Fixed-price contracts—add to contract price.

(ii) Cost-reimbursement contracts—add to contract fee.

(i) *Concurrent and future contract savings.* (1) Payments of the Contractor's share of concurrent and future contract savings shall be made by a modification to the instant contract in accordance with paragraph (h)(5) of this clause. For incentive contracts, shares shall be added as a separate firm-fixed-price line item on the instant contract. The Contractor shall maintain records adequate to identify the first delivered unit for 3 years after final payment under this contract.

(2) The Contracting Officer shall calculate the Contractor's share of concurrent contract savings by—

(i) Subtracting from the reduction in price negotiated on the concurrent contract any Government costs or negative instant contract savings not yet offset; and

(ii) Multiplying the result by the Contractor's sharing rate.

(3) The Contracting Officer shall calculate the Contractor's share of future contract savings by—

(i) Multiplying the future unit cost reduction by the number of future contract units scheduled for delivery during the sharing period;

(ii) Subtracting any Government costs or negative instant contract savings not yet offset; and

(iii) Multiplying the result by the Contractor's sharing rate.

(4) When the Government wishes and the Contractor agrees, the Contractor's share of future contract savings may be paid in a single lump sum rather than in a series of payments over time as future contracts are awarded. Under this alternate procedure, the future contract savings may be calculated when the VECP is accepted, on the basis of the Contracting Officer's forecast of the number of units that will be delivered during the sharing period. The Contractor's share shall be included in a modification to this contract (see paragraph (h)(3) of this clause) and shall not be subject to subsequent adjustment.

(5) *Alternate no-cost settlement method.* When, in accordance with subsection 48.104-4 of the Federal Acquisition Regulation, the Government and the Contractor mutually agree to use the no-cost settlement method, the following applies:

(i) The Contractor will keep all the savings on the instant contract and on its concurrent contracts only.

(ii) The Government will keep all the savings resulting from concurrent contracts placed on other sources, savings from all future contracts, and all collateral savings.

(j) *Collateral savings.* If a VECP is accepted, the Contracting Officer will increase the instant contract amount, as specified in paragraph (h)(5) of this clause, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer will be the sole determiner of the amount of collateral savings.

(k) *Relationship to other incentives.* Only those benefits of an accepted VECP not rewardable under performance, design-to-cost (production unit cost, operating and support costs, reliability and maintainability), or similar incentives shall be rewarded under this clause. However, the targets of such incentives affected by the VECP shall not be adjusted

because of VECP acceptance. If this contract specifies targets but provides no incentive to surpass them, the value engineering sharing shall apply only to the amount of achievement better than target.

(l) *Subcontracts.* The Contractor shall include an appropriate value engineering clause in any subcontract of \$100,000 or more and may include one in subcontracts of lesser value. In calculating any adjustment in this contract's price for instant contract savings (or negative instant contract savings), the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs, and any value engineering incentive payments to a subcontractor, clearly resulting from a VECP accepted by the Government under this contract. The Contractor may choose any arrangement for subcontractor value engineering incentive payments, *provided*, that the payments shall not reduce the Government's share of concurrent or future contract savings or collateral savings.

(m) *Data.* The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (Apr 1984). If the contracting officer selects a mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* The Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting value engineering change proposals (VECP's). In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from accepted VECP's, in accordance with the program requirement sharing rates in paragraph (f) of this clause.

Alternate II (Feb 2000). If the contracting officer selects both a value engineering incentive and mandatory value engineering program requirement, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) *General.* For those contract line items designated in the Schedule as subject to the value engineering program requirement, the Contractor shall (1) engage in a value engineering program, and submit value engineering progress reports, as specified in the Schedule and (2) submit to the Contracting Officer any resulting VECP's. In addition to being paid as the Schedule specifies for this mandatory program, the Contractor shall share in any net acquisition savings realized from VECP's accepted under the program, in accordance with the program requirement sharing rates in paragraph (f) of this clause. For remaining areas of the contract, the Contractor is encouraged to develop, prepare, and submit VECP's voluntarily; for VECP's accepted under these remaining areas, the incentive sharing rates apply. The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

Alternate III (Apr 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a contract calling for a value engineering incentive, delete paragraph (j) from the basic clause and redesignate the remaining paragraphs accordingly.

52.248-2 Value Engineering—Architect-Engineer.

As prescribed in 48.201(f), insert the following clause:

VALUE ENGINEERING—ARCHITECT-ENGINEER (MAR 1990)

(a) *General.* The Contractor shall (1) perform value engineering (VE) services and submit progress reports as specified in the Schedule; and (2) submit to the Contracting Officer any resulting value engineering proposals (VEP's). Value engineering activities shall be performed concurrently with, and without delay to, the schedule set forth in the contract. The services shall include VE evaluation and review and study of design documents immediately following completion of the 35 percent design state or at such stages as the Contracting Officer may direct. Each separately priced line item for VE services shall define specifically the scope of work to be accomplished and may include VE studies of items other than design documents. The Contractor shall be paid as the contract specifies for this effort, but shall not share in savings which may result from acceptance and use of VEP's by the Government.

(b) *Definitions.* "Life cycle cost," as used in this clause, is the sum of all costs over the useful life of a building, system or product. It includes the cost of design, construction, acquisition, operation, maintenance, and salvage (resale) value, if any.

"Value engineering," as used in this clause, means an organized effort to analyze the functions of systems, equipment,

facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance, reliability, quality, and safety.

"Value engineering proposal," as used in this clause, means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

(c) *Submissions.* After award of an architect-engineering contract the contractor shall—

(1) Provide the Government with a fee breakdown schedule for the VE services (such as criteria review, task team review, and bid package review) included in the contract schedule;

(2) Submit, for approval by the Contracting Officer, a list of team members and their respective resumes representing the engineering disciplines required to complete the study effort, and evidence of the team leader's qualifications and engineering discipline. Subsequent changes or substitutions to the approved VE team shall be submitted in writing to the Contracting Officer for approval; and

(3) The team leader shall be responsible for pre-study work assembly and shall edit, reproduce, and sign the final report and each VEP. All VEP's, even if submitted earlier as an individual submission, shall be contained in the final report.

(d) *VEP preparation.* As a minimum, the contractor shall include the following information in each VEP:

(1) A description of the difference between the existing and proposed design, the comparative advantages and disadvantages of each, a justification when an item's function is being altered, the effect of the change on system or facility performance, and any pertinent objective test data.

(2) A list and analysis of design criteria or specifications that must be changed if the VEP is accepted.

(3) A separate detailed estimate of the impact on project cost of each VEP, if accepted and implemented by the Government.

(4) A description and estimate of costs the Government may incur in implementing the VEP, such as design change cost and test and evaluation cost.

(5) A prediction of any effects the proposed change may have on life cycle cost.

(6) The effect the VEP will have on design or construction schedules.

(e) *VEP acceptance.* Approved VEP's shall be implemented by bilateral modification to this contract.

(End of clause)

52.248-3 Value Engineering—Construction.

As prescribed in 48.202, insert the following clause:

VALUE ENGINEERING—CONSTRUCTION (FEB 2000)

(a) *General.* The Contractor is encouraged to develop, prepare, and submit value engineering change proposals (VECP's) voluntarily. The Contractor shall share in any instant contract savings realized from accepted VECP's, in accordance with paragraph (f) of this clause.

(b) *Definitions.* "Collateral costs," as used in this clause, means agency costs of operation, maintenance, logistic support, or Government-furnished property.

"Collateral savings," as used in this clause, means those measurable net reductions resulting from a VECP in the agency's overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

"Contractor's development and implementation costs," as used in this clause, means those costs the Contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the Contractor incurs to make the contractual changes required by Government acceptance of a VECP.

"Government costs," as used in this clause, means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistic support. The term does not include the normal administrative costs of processing the VECP.

"Instant contract savings," as used in this clause, means the estimated reduction in Contractor cost of performance resulting from acceptance of the VECP, minus allowable Contractor's development and implementation costs, including subcontractors' development and implementation costs (see paragraph (h) of this clause).

"Value engineering change proposal (VECP)" means a proposal that—

(1) Requires a change to this, the instant contract, to implement; and

(2) Results in reducing the contract price or estimated cost without impairing essential functions or characteristics; *provided*, that it does not involve a change—

(i) In deliverable end item quantities only; or

(ii) To the contract type only.

(c) *VECP preparation.* As a minimum, the Contractor shall include in each VECP the information described in paragraphs (c)(1) through (7) of this clause. If the proposed change is affected by contractually required configuration management or similar procedures, the instructions in those procedures relating to format, identification, and priority assignment shall govern VECP preparation. The VECP shall include the following:

(1) A description of the difference between the existing contract requirement and that proposed, the comparative advantages and disadvantages of each, a justification when an item's function or characteristics are being altered, and the effect of the change on the end item's performance.

(2) A list and analysis of the contract requirements that must be changed if the VECP is accepted, including any suggested specification revisions.

(3) A separate, detailed cost estimate for (i) the affected portions of the existing contract requirement and (ii) the VECP. The cost reduction associated with the VECP shall take into account the Contractor's allowable development and implementation costs, including any amount attributable to subcontracts under paragraph (h) of this clause.

(4) A description and estimate of costs the Government may incur in implementing the VECP, such as test and evaluation and operating and support costs.

(5) A prediction of any effects the proposed change would have on collateral costs to the agency.

(6) A statement of the time by which a contract modification accepting the VECP must be issued in order to achieve the maximum cost reduction, noting any effect on the contract completion time or delivery schedule.

(7) Identification of any previous submissions of the VECP, including the dates submitted, the agencies and contract numbers involved, and previous Government actions, if known.

(d) *Submission.* The Contractor shall submit VECP's to the Resident Engineer at the worksite, with a copy to the Contracting Officer.

(e) *Government action.* (1) The Contracting Officer will notify the Contractor of the status of the VECP within 45 calendar days after the contracting office receives it. If additional time is required, the Contracting Officer will notify the Contractor within the 45-day period and provide the reason for the delay and the expected date of the decision. The Government will process VECP's expeditiously; however, it will not be liable for any delay in acting upon a VECP.

(2) If the VECP is not accepted, the Contracting Officer will notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any VECP, in whole or in part, at any time before it is accepted by the Government. The Contracting Officer may require that the Contractor provide written notification before undertaking significant expenditures for VECP effort.

(3) Any VECP may be accepted, in whole or in part, by the Contracting Officer's award of a modification to this contract citing this clause. The Contracting Officer may accept the VECP, even though an agreement on price reduction has not been reached, by issuing the Contractor a notice to proceed with the change. Until a notice to proceed is issued or a contract modification applies a VECP to this contract, the Contractor shall perform in accordance with the existing contract. The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

(f) *Sharing*—(1) *Rates*. The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by—

- (i) 45 percent for fixed-price contracts; or
- (ii) 75 percent for cost-reimbursement contracts.

(2) *Payment*. Payment of any share due the Contractor for use of a VECP on this contract shall be authorized by a modification to this contract to—

- (i) Accept the VECP;
- (ii) Reduce the contract price or estimated cost by the amount of instant contract savings; and
- (iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

(g) *Collateral savings*. If a VECP is accepted, the Contracting Officer will increase the instant contract amount by 20 percent of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset. However, the Contractor's share of collateral savings will not exceed the contract's firm-fixed-price or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The Contracting Officer is the sole determiner of the amount of collateral savings.

(h) *Subcontracts*. The Contractor shall include an appropriate value engineering clause in any subcontract of \$50,000 or more and may include one in subcontracts of lesser value. In computing any adjustment in this contract's price under paragraph (f) of this clause, the Contractor's allowable development and implementation costs shall include any subcontractor's allowable development and implementation costs clearly resulting from a VECP accepted by the Government under this contract, but shall exclude any value engineering incentive payments to a subcontractor. The Contractor may choose any arrangement for subcontractor value engineering incentive payments; *provided*, that these payments shall not reduce the Government's share of the savings resulting from the VECP.

(i) *Data*. The Contractor may restrict the Government's right to use any part of a VECP or the supporting data by marking the following legend on the affected parts:

These data, furnished under the Value Engineering—Construction clause of contract _____, shall not be disclosed outside the Government or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering change proposal submitted under the clause. This restriction does not limit the Government's right to use information contained in these data if it has been obtained or is otherwise available from the Contractor or from another source without limitations.

If a VECP is accepted, the Contractor hereby grants the Government unlimited rights in the VECP and supporting data, except that, with respect to data qualifying and submitted as limited rights technical data, the Government shall have

the rights specified in the contract modification implementing the VECP and shall appropriately mark the data. (The terms "unlimited rights" and "limited rights" are defined in Part 27 of the Federal Acquisition Regulation.)

(End of clause)

Alternate I (Apr 1984). When the head of the contracting activity determines that the cost of calculating and tracking collateral savings will exceed the benefits to be derived in a construction contract, delete paragraph (g) from the basic clause and redesignate the remaining paragraphs accordingly.

52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be \$100,000 or less, except (a) if use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate (b), in contracts for research and development work with an educational or nonprofit institution on a no-profit basis, (c) in contracts for architect-engineer services, or (d) if one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

Alternate I (Apr 1984). If the contract is for dismantling, demolition, or removal of improvements, designate the basic clause as paragraph (a) and add the following paragraph (b):

- (b) Upon receipt of the termination notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of the contract, except for property that the Contractor (a) disposed of by bona fide sale or (b) removed from the site.

52.249-2 Termination for Convenience of the Government (Fixed-Price).

As prescribed in 49.502(b)(1)(i), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SEPT 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if

the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, 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 materials, 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 of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the 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) The fabricated or unfabricated parts, 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 the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided*, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Materials Management Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. 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.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid or remaining 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 (f) or paragraph (g) of this clause, exclusive of costs shown in paragraph (g)(3) of this clause, 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 (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) 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 (f) of this clause:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under paragraph (b)(9) of this clause) not previously paid for, adjusted for any saving 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 expense allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under paragraph (g)(1) of this clause;

(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 (g)(2)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(2)(i) of this clause, determined by the Contracting Officer under 49.202 of the Materials Management Acquisition Regulation, in effect on the date of this contract, 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 (g)(2)(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 settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) 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 (g) of this clause, 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.

(i) The cost principles and procedures of Part 31 of the Materials Management Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (e) or (l), respectively, and failed to request a time extension, there is no right of appeal.

(k) 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 of this contract;

(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.

(l) 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 of the contract. 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.

(m)(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 of the contract, 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.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. 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.

(End of clause)

Alternate I (Sept 1996). If the contract is for construction, substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the

termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(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 (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Materials Management Acquisition Regulation, in effect on the date of this contract, 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 (g)(1)(iii) and shall reduce the settlement to reflect the indicated rate of loss.

(2) 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 settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

Alternate II (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) of the basic clause.

Alternate III (Sept 1996). If the contract is for construction and with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, substitute the following paragraph (g) for paragraph (g) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the Contracting Officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(g) If the Contractor and Contracting Officer fail to agree on the whole amount to be paid the Contractor because of the termination of work, the Contracting Officer shall pay the Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under paragraph (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(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 (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under 49.202 of the Materials Management Acquisition Regulation, in effect on the date of this contract, 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.

(2) 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 settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).

As prescribed in 49.502(b)(2), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS) (SEPT 1996)

(a) The Government may terminate performance of work under this contract, in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date. Upon receipt of the notice, if title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor disposed of by bona fide sale or removed from the site.

(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 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 materials, 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 of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the 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) The fabricated or unfabricated parts, 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 has 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 the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; provided, however, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Materials Management Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept title to those items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or

if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. 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.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (f) or paragraph (g) of this clause, exclusive of settlement costs, 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 amended and the Contractor paid the agreed amount. Paragraph (g) of this clause shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(g) 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 (f) of this clause:

(1) For contract work performed before the effective date of termination, the total (without duplication of any items) of—

(i) The cost of this work;

(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 (g)(1)(i) of this clause; and

(iii) A sum, as profit on subdivision (g)(1)(i) of this clause, determined by the Contracting Officer under section 49.202 of the Materials Management Acquisition Regulation, in effect on the date of this contract, 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 amount of the settlement to reflect the indicated rate of loss.

(2) 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 settlements); and

(iii) Preservation and protection of property under paragraph (b)(8) of this clause.

(h) 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 (g) of this clause, 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.

(i) The cost principles and procedures of Part 31 of the Materials Management Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e), (g), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) or (l) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e), (g), or (l) of this clause, 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.

(k) 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 of this contract;

(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.

(l) 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 of the contract. 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.

(m)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments

against cost incurred by the Contractor for the terminated portion of the contract, 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.

(n) Unless otherwise provided in this contract or by statute, the Contractor shall maintain all records and documents relating to the terminated portion of this contract for 3 years after final settlement. This includes all books and other evidence bearing on the Contractor's costs and expenses under this contract. 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.

(End of clause)

Alternate I (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

52.249-4 Termination for Convenience of the Government (Services) (Short Form).

As prescribed in 49.502(c), insert the following clause in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the Contracting Officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT
(SERVICES) (SHORT FORM) (APR 1984)

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Govern-

ment's interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT
(EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS)
(SEPT 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including—

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under paragraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in Subpart 31.3 of the Materials Management Acquisition Regulation (MMAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, "Cost Principles for Nonprofit Organizations," July 8, 1980, those cost principle shall apply; *provided*, that if the Contractor is a nonprofit institution listed in Attachment C of OMB Circular A-122, the cost principles at

MMAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

52.249-6 Termination (Cost-Reimbursement).

As prescribed in 49.503(a)(1), insert the following clause:

TERMINATION (COST-REIMBURSEMENT) (SEPT 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 45.6 of the Materials Management Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The

Contractor may request the Government to remove those items or enter into an agreement for their storage. Within 15 days, the Government will accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(f) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. 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.

(g) Subject to paragraph (f) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid (including an allowance for fee) because of the termination. The contract shall be amended, and the Contractor paid the agreed amount.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount of costs and/or fee to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay that amount, which shall include the following:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) 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 paragraph (h)(1) of this clause.

(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 settlements); and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory. If the termi-

nation is for default, no amounts for the preparation of the Contractor's termination settlement proposal may be included.

(4) A portion of the fee payable under the contract, determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the total number of articles (or amount of services) delivered to and accepted by the Government is to the total number of articles (or amount of services) of a like kind required by the contract.

(5) If the settlement includes only fee, it will be determined under paragraph (h)(4) of this clause.

(i) The cost principles and procedures in Part 31 of the Federal Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(j) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (f), (h), or (l) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (f) and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (f), (h) or (l) of this clause, 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.

(k) 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 of this contract;

(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 this clause and not recovered by or credited to the Government.

(l) The Contractor and Contracting Officer must agree to any equitable adjustment in fee for the continued portion of the contract when there is a partial termination. The Contracting Officer shall amend the contract to reflect the agreement.

(m)(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 of the contract, 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.

(n) The provisions of this clause relating to fee are inapplicable if this contract does not include a fee.

(End of clause)

Alternate I (Sept 1996). If the contract is for construction, substitute the following paragraph (h)(4) for paragraph (h)(4) of the basic clause:

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate II (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (m)(2) from the basic clause.

Alternate III (Sept 1996). If the contract is for construction with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, the following paragraph (h)(4) shall be substituted for paragraph (h)(4) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(4) A portion of the fee payable under the contract determined as follows:

(i) If the contract is terminated for the convenience of the Government, the settlement shall include a percentage of

the fee equal to the percentage of completion of work contemplated under the contract, but excluding subcontract effort included in subcontractors' termination settlement proposals, less previous payments for fee.

(ii) If the contract is terminated for default, the total fee payable shall be such proportionate part of the fee as the actual work in place is to the total work in place required by the contract.

Alternate IV (Sept 1996). If the contract is a time-and-material or labor-hour contract, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause:

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the Contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination, if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of price(s) for the continued portion of the contract. 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.

Alternate V (Sept 1996). If the contract is a time-and-material or labor-hour contract with an agency of the U.S. Government or with State, local or foreign governments or their agencies, substitute the following paragraphs (h) and (l) for paragraphs (h) and (l) of the basic clause. Paragraph (m)(2) may be deleted from the basic clause if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate.

(h) If the Contractor and the Contracting Officer fail to agree in whole or in part on the amount to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor and shall pay the amount determined as follows:

(1) If the termination is for the convenience of the Government, include—

(i) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule, less any hourly rate payments already made to the contractor;

(ii) An amount (computed under the provisions for payment of materials) for material expenses incurred before the effective date of termination, not previously paid to the Contractor;

(iii) An amount for labor and material expenses computed as if the expenses were incurred before the effective date of termination if they are reasonably incurred after the effective date, with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue these expenses as rapidly as practicable;

(iv) If not included in subdivision (h)(1)(i), (ii), or (iii) of this clause, the cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract; and

(v) The reasonable costs of settlement of the work terminated, including—

(A) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;

(B) The termination and settlement of subcontracts (excluding the amounts of such settlements); and

(C) Storage, transportation, and other costs incurred, reasonably necessary for the protection or disposition of the termination inventory.

(2) If the termination is for default of the Contractor, include the amounts computed under paragraph (h)(1) of this clause but omit—

(i) Any amount for preparation of the Contractor's termination settlement proposal; and

(ii) The portion of the hourly rate allocable to profit for any direct labor hours expended in furnishing materials and services not delivered to and accepted by the Government.

* * * * *

(l) If the termination is partial, the Contractor may file with the Contracting Officer a proposal for an equitable adjustment of the price(s) for the continued portion of the contract. 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.

52.249-7 Termination (Fixed-Price Architect-Engineer).

As prescribed in 49.503(b), insert the following clause in solicitations and contracts for architect-engineer services when a fixed-price contract is contemplated:

TERMINATION (FIXED-PRICE ARCHITECT-ENGINEER) (APR 1984)

(a) The Government may terminate this contract in whole or, from time to time, in part, for the Government's convenience or because of the failure of the Contractor to fulfill the contract obligations. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the nature, extent, and effective date of the termination. Upon receipt of the notice, the Contractor shall—

(1) Immediately discontinue all services affected (unless the notice directs otherwise); and

(2) Deliver to the Contracting Officer all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this contract, whether completed or in process.

(b) If the termination is for the convenience of the Government, the Contracting Officer shall make an equitable adjustment in the contract price but shall allow no anticipated profit on unperformed services.

(c) If the termination is for failure of the Contractor to fulfill the contract obligations, the Government may complete the work by contract or otherwise and the Contractor shall be liable for any additional cost incurred by the Government.

(d) If, after termination for failure to fulfill contract obligations, it is determined that the Contractor had not failed, the rights and obligations of the parties shall be the same as if the

termination had been issued for the convenience of the Government.

(e) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

52.249-8 Default (Fixed-Price Supply and Service).

As prescribed in 49.504(a)(1), insert the following clause:

DEFAULT (FIXED-PRICE SUPPLY AND SERVICE)
(APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (1)(iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract 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 the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) 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 this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) 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 of this contract. 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 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.

(End of clause)

Alternate I (Apr 1984). If the contract is for transportation or transportation-related services, delete paragraph (f) of the basic clause, redesignate the remaining paragraphs accordingly, and substitute the following paragraphs (a) and (e) for paragraphs (a) and (e) of the basic clause:

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

- (i) Pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension;
- (ii) Make progress, so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or
- (iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting

Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(e) If this contract is terminated while the Contractor has possession of Government goods, the Contractor shall, upon direction of the Contracting Officer, protect and preserve the goods until surrendered to the Government or its agent. The Contractor and Contracting Officer shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be a dispute under the Disputes clause.

52.249-9 Default (Fixed-Price Research and Development).

As prescribed in 49.504(b), insert the following clause:

DEFAULT (FIXED-PRICE RESEARCH AND DEVELOPMENT)
(APR 1984)

(a)(1) The Government may, subject to paragraphs (c) and (d) of this clause, by written Notice of Default to the Contractor, terminate this contract in whole or in part if the Contractor fails to—

(i) Perform the work under the contract within the time specified in this contract or any extension;

(ii) Prosecute the work so as to endanger performance of this contract (but see paragraph (a)(2) of this clause); or

(iii) Perform any of the other provisions of this contract (but see paragraph (a)(2) of this clause).

(2) The Government's right to terminate this contract under subdivisions (a)(1)(ii) and (iii) of this clause may be exercised if the Contractor does not cure such failure within 10 days (or more, if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, work similar to the work terminated, and the Contractor will be liable to the Government for any excess costs for the similar work. 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 the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) 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 or other performance requirements.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed or partially completed work not previously delivered to, and accepted by, the Government and (2) other property, including contract rights, specifically produced or acquired for the terminated portion of this contract. 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, if separately stated, for completed work it has accepted and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above that it accepts, and (4) 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 from 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.

(End of clause)

52.249-10 Default (Fixed-Price Construction).

As prescribed in 49.504(c)(1), insert the following clause:

DEFAULT (FIXED-PRICE CONSTRUCTION) (APR 1984)

(a) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work (or the separable part of the work) that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to pro-

ceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any delay (unless extended by the Contracting Officer), notifies the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of delay. If, in the judgment of the Contracting Officer, the findings of fact warrant such action, the time for completing the work shall be extended. The findings of the Contracting Officer shall be final and conclusive on the parties, but subject to appeal under the Disputes clause.

(c) If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of the Government.

(d) 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.

(End of clause)

Alternate I (Apr 1984). If the contract is for dismantling, demolition, or removal of improvements, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor,

terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

Alternate II (Apr 1984). If the contract is to be awarded during a period of national emergency, paragraph (b)(1) below may be substituted for paragraph (b)(1) of the basic clause:

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

(i) Acts of God or of the public enemy,

(ii) Acts of the Government in either its sovereign or contractual capacity,

(iii) Acts of another Contractor in the performance of a contract with the Government,

(iv) Fires,

(v) Floods,

(vi) Epidemics,

(vii) Quarantine restrictions,

(viii) Strikes,

(ix) Freight embargoes,

(x) Unusually severe weather, or

(xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

Alternate III (Apr 1984). If the contract is for dismantling, demolition, or removal of improvements and is to be awarded during a period of national emergency, substitute the following paragraph (a) for paragraph (a) of the basic clause. The following paragraph (b)(1) may be substituted for paragraph (b)(1) of the basic clause:

(a)(1) If the Contractor refuses or fails to prosecute the work, or any separable part, with the diligence that will insure its completion within the time specified in this contract, including any extension, or fails to complete the work within this time, the Government may, by written notice to the Contractor, terminate the right to proceed with the work or the part of the work that has been delayed. In this event, the Government may take over the work and complete it by contract or otherwise, and

may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work.

(2) If title to property is vested in the Contractor under this contract, it shall revert in the Government regardless of any other clause of this contract, except for property that the Contractor has disposed of by bona fide sale or removed from the site.

(3) The Contractor and its sureties shall be liable for any damage to the Government resulting from the Contractor's refusal or failure to complete the work within the specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by the Government in completing the work.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause, if—

(1) The delay in completing the work arises from causes other than normal weather beyond the control and without the fault or negligence of the Contractor. Examples of such causes include—

- (i) Acts of God or of the public enemy,
- (ii) Acts of the Government in either its sovereign or contractual capacity,
- (iii) Acts of another Contractor in the performance of a contract with the Government,
- (iv) Fires,
- (v) Floods,
- (vi) Epidemics,
- (vii) Quarantine restrictions,
- (viii) Strikes,
- (ix) Freight embargoes,
- (x) Unusually severe weather, or
- (xi) Delays of subcontractors or suppliers at any tier arising from causes other than normal weather beyond the control and without the fault or negligence of both the Contractor and the subcontractors or suppliers; and

52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).

As prescribed in 49.505(a), insert the following clause:

TERMINATION OF WORK (CONSOLIDATED FACILITIES OR FACILITIES ACQUISITION) (SEPT 1996)

(a) The Government may terminate performance of work under this contract in whole, or from time to time, in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations regardless of any delay in determining any item of reimbursable cost 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 materials, 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 of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With the approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part under this contract; the approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated; 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 the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After expiration of the plant clearance period as defined in Subpart 45.6 of the Materials Management Acquisition Regulation, the Contractor may submit a list, to the

Contracting Officer certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request the Government to remove these items or enter into an agreement for their storage. Within 15 days, the Government shall accept the items and remove them or enter into a storage agreement. The Contracting Officer may verify the list upon removal of the items or, if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

(e) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. 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 that amount.

(f) Subject to paragraph (e) of this clause, the Contractor and the Contracting Officer may agree on the whole or any part of the amount to be paid because of the termination. The contract shall be amended, and the Contractor paid agreed amount.

(g) If the Contractor and the Contracting Officer fail to agree on the whole amount of costs to be paid because of the termination of work, the Contracting Officer shall determine, on the basis of information available, the amount, if any, due the Contractor, and shall pay the amount, determined as follows:

(1) All costs reimbursable under this contract, not previously paid, for the performance of this contract before the effective date of the termination, and part of those costs that may continue for a reasonable time with the approval of or as directed by the Contracting Officer; however, the Contractor shall discontinue those costs as rapidly as practicable.

(2) 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 paragraph (g)(1) of this clause.

(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; and

(iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.

(h) The cost principles and procedures in Part 31 of the Materials Management Acquisition Regulation, in effect on the date of this contract, shall govern all costs claimed, agreed to, or determined under this clause.

(i) The Contractor shall have the right of appeal, under the Disputes clause, from any determination made by the Contracting Officer under paragraph (e) or (g) of this clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (e) of this clause, and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (e) or (g) of this clause, 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.

(j) 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 of this contract;

(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 this clause and not recovered by or credited to the Government.

(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 of the contract, 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) Any related contract of the Contractor may be equitably adjusted if it provides for such an adjustment and if it is affected by a Notice of Termination under this clause. The Government shall not be liable to the Contractor for damages

or loss of profits because of any Notice of Termination issued under this clause.

(End of clause)

Alternate I (Sept 1996). If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, delete paragraph (k)(2) from the basic clause.

52.249-12 Termination (Personal Services).

As prescribed in 49.505(b), insert the following clause in solicitations and contracts for personal services (see Part 37):

TERMINATION (PERSONAL SERVICES) (APR 1984)

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

(End of clause)

52.249-13 Failure to Perform.

As prescribed in 49.505(c), insert the following clause in facilities contracts except facilities use contracts with non-profit educational institutions:

FAILURE TO PERFORM (APR 1984)

(a) Subject to the Excusable Delays clause (if included in this contract), if the Contractor fails to perform this contract under its terms, the Contracting Officer shall give the Contractor written notice stating the failure. Thereafter, regardless of any other provision of this contract, the Contractor shall not be entitled to an equitable adjustment under either this contract or any related contract, to the extent the equitable adjustment arises from the Contractor's failure to perform or from any reasonable remedial action taken by the Contracting Officer based upon the failure.

(b) The failure of the Government to insist, in one or more instances, upon the performance of any term of this contract is not a waiver of the Government's right to future performance of such term, and the Contractor's obligation for future performance of such term shall continue in effect.

(c) 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.

(End of clause)

52.249-14 Excusable Delays.

As prescribed in 49.505(d), insert the following clause in solicitations and contracts for supplies, services, construction, and research and development on a fee basis whenever a cost-reimbursement contract is contemplated. Also insert the clause in time-and-material contracts, labor-hour contracts, consolidated facilities contracts, and facilities acquisition contracts. When used in construction contracts, substitute the words "completion time" for "delivery schedule" in the last sentence of the clause. When used in facilities contracts, substitute the words "termination of work" for "termination" in the last sentence of the clause.

EXCUSABLE DELAYS (APR 1984)

(a) Except for defaults of subcontractors at any tier, the Contractor shall not be in default because of any failure to perform this contract under its terms if the failure arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of these causes are (1) acts of God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. "Default" includes failure to make progress in the work so as to endanger performance.

(b) If the failure to perform is caused by the failure of a subcontractor at any tier to perform or make progress, and if the cause of the failure was beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be deemed to be in default, unless—

(1) The subcontracted supplies or services were obtainable from other sources;

(2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and

(3) The Contractor failed to comply reasonably with this order.

(c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in 50.403-3, insert the following clause in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)):

INDEMNIFICATION UNDER PUBLIC LAW 85-804
(APR 1984)

(a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
- (3) A separate and complete major industrial operation in connection with the performance of this contract.

(b) Under Public Law 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—

- (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;
- (2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
- (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.

(c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.

(d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for—

- (1) Government claims against the Contractor (other than those arising through subrogation); or
- (2) Loss or damage affecting the Contractor's property.

(e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor

against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.

(f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.

(g) The Contractor shall—

(1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably be expected to involve indemnification under this clause;

(2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;

(3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and

(4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.

(h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)

Alternate I (Apr 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

(i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—

(1) Excepted from the release required under this contract's clause relating to allowable cost; and

(2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

52.251-1 Government Supply Sources.

As prescribed in 51.107, insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The

provisions of the clause entitled “Government Property,” except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

Alternate I (Apr 1984). If a facilities contract is contemplated, delete the last sentence from the basic clause.

52.251-2 Interagency Fleet Management System Vehicles and Related Services.

As prescribed in 51.205, insert the following clause:

INTERAGENCY FLEET MANAGEMENT SYSTEM VEHICLES AND RELATED SERVICES (JAN 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(End of provision)

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in

full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(End of clause)

52.252-3 Alterations in Solicitation.

As prescribed in 52.107(c), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)

Portions of this solicitation are altered as follows:

(End of provision)

52.252-4 Alterations in Contract.

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

(End of provision)

52.252-5 Authorized Deviations in Provisions.

As prescribed in 52.107(e), insert the following provision in solicitations that include any MMAR or supplemental provision with an authorized deviation. Whenever any MMAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert “(DEVIATION)” after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

(a) The use in this solicitation of any Materials Management Acquisition Regulation provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the provision.

(b) The use in this solicitation of any _____ [insert regulation name] provision with an authorized deviation is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of provision)

52.252-6 Authorized Deviations in Clauses.

As prescribed in 52.107(f), insert the following clause in solicitations and contracts that include any MMAR clause with an authorized deviation. Whenever any MMAR clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert “(DEVIATION)” after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

(a) The use in this solicitation or contract of any Materials Management Acquisition Regulation clause with an authorized deviation is indicated by the addition of “(DEVIATION)” after the date of the clause.

(b) The use in this solicitation or contract of any _____. [insert regulation name] clause with an authorized deviation

is indicated by the addition of “(DEVIATION)” after the name of the regulation.

(End of clause)

52.253-1 Computer Generated Forms.

As prescribed in MMAR 53.111, insert the following clause:

COMPUTER GENERATED FORMS (JAN 1991)

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Materials Management Acquisition Regulation (MMAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

Subpart 52.3—Provision and Clause Matrix**52.300 Scope of subpart.**

The matrix in this subpart contains a column for each principal type and/or purpose of contract (see 52.101(e)).

52.301 Solicitation provisions and contract clauses (Matrix).

KEY:			
<u>Type of Contract:</u>			
P or C	=	Provision or Clause	COM SVC = Communication Services
IBR	=	Is Incorporation by Reference Authorized? (See MMAR 52.102)	DDR = Dismantling, Demolition, or Removal of Improvements
UCF	=	Uniform Contract Format Section, when Applicable	A&E = Architect-Engineering
FP SUP	=	Fixed-Price Supply	FAC = Facilities
CR SUP	=	Cost-Reimbursement Supply	IND DEL = Indefinite Delivery
FP R&D	=	Fixed-Price Research & Development	TRN = Transportation
CR R&D	=	Cost Reimbursement Research & Development	SAP = Simplified Acquisition Procedures (excluding micro-purchase)
FP SVC	=	Fixed-Price Service	UTL SVC = Utility Services
CR SVC	=	Cost Reimbursement Service	CI = Commercial Items
FP CON	=	Fixed-Price Construction	<u>Contract Purpose:</u>
CR CON	=	Cost Reimbursement Construction	R = Required
T&M LH	=	Time & Material/Labor Hours	A = Required when Applicable
LMV	=	Leasing of Motor Vehicles	O = Optional
			√ = Revision

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.202-1 Definitions.	2.201	C	Yes	I	R	R	A	R	R	R		R	R	R	R		R	R	R	R		R	
Alternate I	2.201	C	Yes	I							R						R	R					
52.203-2 Certificate of Independent Price Determination.	3.103-1	P	No	K	A		A		A		A			A	A	A	A	A	A	A		A	
52.203-3 Gratuities.	3.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.203-5 Covenant Against Contingent Fees.	3.404	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R	
52.203-6 Restrictions on Subcontractor Sales to the Government.	3.503-2	C	Yes	I	R	R			R	R										R		R	
Alternate I	3.503-2	C	Yes																				R

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.203-7 Anti-Kickback Procedures.	3.502-3	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	3.104-9(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.203-12 Limitation on Payments to Influence Certain Federal Transactions.	3.808(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-1 Approval of Contract.	4.103	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-2 Security Requirements.	4.404(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	4.404(b)	C	Yes	I					A														
Alternate II	4.404(c)	C	Yes	I						A	A						A	A					
52.204-3 Taxpayer Identification.	4.905	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.204-4 Printed or Copied Double-Sided on Recycled Paper.	4.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.204-5 Women-Owned Business (Other Than Small Business)	4.603(b)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

FAC 2001-09 SEPTEMBER 30, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.204-6 Data Universal Numbering System (DUNS) Number.	4.603(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.207-4 Economic Purchase Quantity—Supplies.	7.203	P	No	K	A	A													A		A		
52.207-5 Option to Purchase Equipment.	7.404	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-4 Vehicle Lease Payments.	8.1104(a)	C	Yes	I										A								A	
52.208-5 Condition of Leased Vehicles.	8.1104(b)	C	Yes	I										A								A	
52.208-6 Marking of Leased Vehicles.	8.1104(c)	C	Yes	I										A								A	
52.208-7 Tagging of Leased Vehicles.	8.1104(d)	C	Yes	I										A								A	
52.208-8 Required Sources for Helium and Helium Usage Data.	8.505	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.208-9 Contractor Use of Mandatory Sources of Supply or Services.	8.004 ✓	C	Yes	I	A	A														A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.209-1 Qualification Requirements.	9.206-2	C	No	I	A	A			A	A				A					A		A		
52.209-3 First Article Approval— Contractor Testing.	9.308-1 (a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-1 (a)(2) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2 (a)(3) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-4 First Article Approval— Government Testing.	9.308-2 (a)(1) and (b)(1)	C	Yes	I	A	O								A					A		A		
Alternate I	9.308-2 (a)(1) and (b)(2)	C	Yes	I	A	O								A					A		A		
Alternate II	9.308-2 (a)(1) and (b)(3)	C	Yes	I	A	O								A					A		A		
52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	9.409(a)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	9.409(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	11.204(a)	P	No	L	A	A	A	A	A	A	A			A	A				A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.211-2 Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	11.204(b)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A		
52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	11.204(c)	P	No	L	A	A	A	A	A	A	A			A	A			A	A		A		
52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Index Descriptions.	11.204(d)	P	No	L	A	A	A	A	A	A	A			A	A			A	A	A	A		
52.211-5 Material Requirements.	11.304	C	Yes	I	R	R															A		
52.211-6 Brand Name or Equal.	11.107(a)	P	Yes	L	A	A							A						A		A		
52.211-7 Alternatives to Government-Unique Standards.	11.107(b)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.211-8 Time of Delivery.	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404(a)(2)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.211-9 Desired and Required Time of Delivery.	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate I	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate III	11.404(a)(3)	C	No	F	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.211-10 Commencement, Prosecution, and Completion of Work.	11.404(b)	C	Yes							R													
Alternate I	11.404(b)	C	Yes							R													
52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.	11.503(a)	C	Yes	F	O		O		O					O								O	O
52.211-12 Liquidated Damages—Construction.	11.503(b)	C	Yes							O	O											O	
52.211-13 Time Extensions.	11.503(c)	C	Yes							A	A											A	
52.211-14 Notice of Priority Rating for National Defense Use.	11.604(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.211-16 Variation in Quantity.	11.703(a)	C	Yes	F	A				A						A						A		
52.211-17 Delivery of Excess Quantities.	11.703(b)	C	Yes	F	O										O					O		O	
52.211-18 Variation in Estimated Quantity.	11.703(c)	C	Yes							A												A	
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R

FAC 2001-06 APRIL 4, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
		P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.212-2 Evaluation—Commercial Items.	12.301(c)(1)	P	No	NA	O		O		O		O			O	O	O	O	O	O	O	O	O	O
52.212-3 Offeror Representations and Certifications—Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	A
Alternate II	12.301(b)(2)	P	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	A
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	C	Yes	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	A	R
Alternate I	12.301(b)(4)	C	No	NA	A		A		A		A			A	A	A	A	A	A	A	A	Z	R
52.213-1 Fast Payment Procedure.	13.404	C	Yes		A									A					A		A		
52.213-2 Invoices.	13.302-5(b)	C	Yes																		A		
52.213-3 Notice to Supplier.	13.302-5(c)	C	Yes																		A		
52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).	13.302-5(d)	C	Yes																		A		
52.214-3 Amendments to Invitations for Bids.	14.201-6 (b)(1)✓	P	Yes	L	A				A		A			A	A	A			A	A		A	
52.214-4 False Statements in Bids.	14.201-6 (b)(2)✓	P	Yes	L	A				A		A			A	A	A			A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.214-5 Submission of Bids.	14.201-6 (c)(1)	P	Yes	L	A					A		A			A	A	A			A	A		A	
52.214-6 Explanation to Prospective Bidders.	14.201-6 (c)(2)	P	Yes	L	A					A		A			A	A	A			A	A		A	
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201-6 (c)(3)	P	Yes	L	A					A		A			A	A	A			A	A		A	
52.214-9 Failure to Submit Bid.	14.201-6 (e)(1)	P	Yes	L	A					A					A	A	A			A	A		A	
52.214-10 Contract Award—Sealed Bidding.	14.201-6 (e)(2)	P	Yes	L	A					A					A	A	A			A	A		A	
52.214-12 Preparation of Bids.	14.201-6(f)	P	Yes	L	A					A					A	A	A			A	A		A	
52.214-13 Telegraphic Bids.	14.201-6 (g)(1)	P	Yes	L	A					A		A			A	A	A			A	A		A	
Alternate I	14.201-6 (g)(2)	P	Yes	L	A																		A	
52.214-14 Place of Performance—Sealed Bidding.	14.201-6(h)	P	No	K	A					A					A	A	A			A	A		A	
52.214-15 Period for Acceptance of Bids.	14.201-6(i)	P	Yes	L	A					A					A	A	A			A	A		A	
52.214-16 Minimum Bid Acceptance Period.	14.201-6(j)	P	No	K	A					A					A	A	A			A	A		A	
52.214-18 Preparation of Bids—Construction.	14.201-6(l)	P	Yes									A												
52.214-19 Contract Award—Sealed Bidding—Construction.	14.201-6(m)	P	Yes									A					A							
52.214-20 Bid Samples.	14.201-6 (o)(1)	P	Yes	L	A					A					A					A				
Alternate I	14.201-6 (o)(2)(i)	P	Yes	L	A					A					A					A				
Alternate II	14.201-6 (o)(2)(ii)	P	Yes	L	A					A					A					A				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.214-21 Descriptive Literature.	14.201-6 (p)(1)	P	Yes	L	A					A					A					A			
Alternate I	14.201-6 (p)(2)	P	No	L	A					A					A					A			
52.214-22 Evaluation of Bids for Multiple Awards.	14.201-6(q)	P	Yes	M	A					A		A			A	A	A			A	A		
52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	14.201-6(r)	P	Yes	L	A		A			A		A			A	A	A			A			
52.214-24 Multiple Technical Proposals.	14.201-6(s)	P	Yes	M	A		A			A		A			A					A			
52.214-25 Step Two of Two-Step Sealed Bidding.	14.201-6(t)	P	Yes	L	A					A		A			A	A	A						
52.214-26 Audit and Records—Sealed Bidding.	14.201-7(a)	C	Yes	I	A					A		A			A	A	A			A	A		
52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7 (b)(1)	C	Yes	I	A					A		A			A	A	A			A	A		
52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	14.201-7 (c)(1)	C	Yes	I	A					A		A			A	A	A			A	A		
52.214-29 Order of Precedence—Sealed Bidding.	14.201-7(d)	C	Yes	I	A					A		A			A	A	A			A	A		
52.214-30 Annual Representations and Certifications—Sealed Bidding.	14.201-6(u)	P	No	K	A					A					A	A	A			A	A		A
52.214-31 Facsimile Bids.	14.201-6(v)	P	Yes	L	A					A					A	A	A			A	A		A
52.214-34 Submission of Offers in the English Language.	14.201-6(w)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.214-35 Submission of Offers in U.S. Currency.	14.201-6(x)	P	Yes		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.215-1 Instructions to Offerors—Competitive.	15.209(a)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A	
Alternate I	15.209(a)(1)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A	
Alternate II	15.209(a)(2)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A	
52.215-2 Audit and Records—Negotiation.	15.209(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A			A		A	
Alternate I	15.209(b)(2)	C	Yes	I														R					
Alternate II	15.209(b)(3)	C	Yes	I		A		A		A		A											
Alternate III	15.209(b)(4)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		A	
52.215-3 Request for Information or Solicitation for Planning Purposes.	15.209(c)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.215-5 Facsimile Proposals.	15.209(e)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.215-6 Place of Performance.	15.209(f)	P	No	K	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A			
52.215-7 Annual Representations and Certifications—Negotiation.	15.209(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.215-8 Order of Precedence—Uniform Contract Format.	15.209(h)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A	
52.215-9 Changes or Additions to Make-or-Buy Program.	15.408(a)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A		A	
Alternate I	15.408(a)(1)	C	Yes	I	A	A	A	A	A	A													
Alternate II	15.408(a)(2)	C	Yes	I	A	A	A	A	A	A													
52.215-10 Price Reduction for Defective Cost or Pricing Data.	15.408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.	15.408(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-12 Subcontractor Cost or Pricing Data.	15.408(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-13 Subcontractor Cost or Pricing Data—Modifications.	15.408(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-14 Integrity of Unit Prices.	15.408(f)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	15.408(f)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.215-15 Pension Adjustments and Asset Reversions.	15.408(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A		
52.215-16 Facilities Capital Cost of Money.	15.408(h)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A		
52.215-17 Waiver of Facilities Capital Cost of Money.	15.408(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A		
52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.	15.408(j)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.215-19 Notification of Ownership Changes.	15.408(k)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
Alternate II	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate III	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate IV	15.408(l)	P	No	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate I	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate II	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate III	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
Alternate IV	15.408(m)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	
52.216-1 Type of Contract.	16.105	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.216-2 Economic Price Adjustment—Standard Supplies.	16.203-4(a)	C	No	I	O										O					O			
52.216-3 Economic Price Adjustment—Semistandard Supplies.	16.203-4(b)	C	No	I	O										O					O			
52.216-4 Economic Price Adjustment—Labor and Material.	16.203-4(c)	C	Yes	I	O				O		O			O	O	O	O	O	O				
52.216-5 Price Redetermination—Prospective.	16.205-4	C	Yes	I				A		A			A		A	A	A	A	A				
52.216-6 Price Redetermination—Retroactive.	16.206-4	C	Yes	I				A		A			A		A		A		A	A			
52.216-7 Allowable Cost and Payment.	16.307(a)	C	Yes	I				A		A			A		A	A	A	A		A	A		
Alternate I	16.307(a)(2)	C	Yes	I									A										
52.216-8 Fixed Fee.	16.307(b)	C	Yes	I				A		A			A		A	A	A	A	A	A	A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.216-9 Fixed Fee—Construction.	16.307(c)	C	Yes									A											
52.216-10 Incentive Fee.	16.307(d)	C	Yes	I		A		A		A			A		A	A			A	A			
52.216-11 Cost Contract—No Fee.	16.307(e)(1)	C	Yes	I		A		A		A		A	A	A	A	A		A	A	A			
Alternate I	16.307(e)(2)	C	Yes	I				A															
52.216-12 Cost-Sharing Contract—No Fee.	16.307(f)(1)	C	Yes	I		A		A		A		A			A	A	A	A	A	A			
Alternate I	16.307(f)(2)	C	Yes	I				A															
52.216-13 Allowable Cost and Payment—Facilities.	16.307(g)(1)	C	Yes	I														A					
Alternate I	16.307(g)(2)	C	Yes	I														O					
52.216-14 Allowable Cost and Payment—Facilities Use.	16.307(h)	C	Yes	I														A					
52.216-15 Predetermined Indirect Cost Rates.	16.307(i)	C	Yes	I				A															
52.216-16 Incentive Price Revision—Firm Target.	16.405(a)	C	Yes	I	A		A		A		A		A	A	A	A	A		A				
Alternate I	16.405(a)	C	Yes	I	A				A				A	A	A				A				
52.216-17 Incentive Price Revision—Successive Targets.	16.405(b)	C	Yes	I	A		A		A		A		A	A	A	A	A		A				
Alternate I	16.405(b)	C	Yes	I	A		A		A				A	A	A				A				
52.216-18 Ordering.	16.506(a)	C	Yes	I															A				
52.216-19 Order Limitations.	16.506(b)	C	Yes	I															A				
52.216-20 Definite Quantity.	16.506(c)	C	Yes	I															A				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.216-21 Requirements.	16.506(d)(1)	C	Yes	I																A			
Alternate I	16.506(d)(2)	C	Yes	I																A			
Alternate II	16.506(d)(3)	C	Yes	I																A			
Alternate III	16.506(d)(4)	C	Yes	I																A			
Alternate IV	16.506(d)(5)	C	Yes	I																A			
52.216-22 Indefinite Quantity.	16.506(e)	C	Yes	I																A			
52.216-23 Execution and Commencement of Work. (See Note 1.)	16.603-4 (b)(1)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.216-24 Limitation of Government Liability. (See Note 1.)	16.603-4 (b)(2)	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.216-25 Contract Definitization. (See Note 1.)	16.603-4 (b)(3)	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I (See Note 1.)	16.603-4 (b)(3)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.216-26 Payments of Allowable Costs Before Definitization. (See Note 1.)	16.603-4(c)	C	Yes	I		A		A		A		A				A	A	A	A	A			
52.216-27 Single or Multiple Awards.	16.506(f)	P	Yes	L																A			
52.216-28 Multiple Awards for Advisory and Assistance Services.	16.506(g)	P	Yes	L																A			
52.217-2 Cancellation Under Multiyear Contracts.	17.109(a)	C	Yes	I	A				A					A						A			
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			A	A			A	A						A	A		
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	P	Yes	M	A	A			A	A			A	A						A	A		
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	A	A			A	A			A	A						A	A		

FAC 2001-06 APRIL 4, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A					A					A					A	A		
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A	A						A			
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A	A			A							A	A		
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	Yes	I					A	A			A							A	A		
52.219-1 Small Business Program Representations.	19.307(a)(1)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.307(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-2 Equal Low Bids.	19.307(c)	P	No	K	A				A		A			A	A	A				A	A		A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I		A		A		A		A			A	A	A		A	A			
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A	
52.222-6 Davis-Bacon Act.	22.407(a)	C	Yes	I							A	A										A	
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I							A	A											
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I							A	A											
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I							A	A											
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I							A	A											
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I							A	A											
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I							A	A										A	
52.222-13 Compliance with Davis-Bacon and Related Act Regulations.	22.407(a)	C	Yes	I							A	A										A	
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I							A	A										A	
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I							A	A										A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I								A												
52.222-17 Labor Standards for Construction Work—Facilities Contracts.	22.407(d)	C	Yes	I														A						
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A													A		A		A	
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A													A		A		A	
52.222-20 Walsh-Healey Public Contracts Act.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes								A	A										A		
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A		A	
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	A	
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

FAC 2001-04 FEBRUARY 20, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes								A	A										A	
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-30 Davis-Bacon Act-Price Adjustment (None or Separately Specified Method).	22.407(e)	C									A	A											
52.222-31 Davis Bacon Act-Price Adjustment (Percentage Method).	22.407(f)	C									A	A											
52.222-32 Davis-Bacon Act-Price Adjustment (Actual Method).	22.407(g)	C									A	A											
52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1310(A)(1)✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1308(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-36 Affirmative Action for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	22.1308(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-38 Compliance with Veterans' Employment Reporting Requirements.	22.1310(c)	P	Yes	K ✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-41 Service Contract Act of 1965, As Amended.	22.1006(a)	C	Yes	I						A	A			A		A	A	A			A	A	
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I						A	A			A		A	A	A			A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	22.1006 (c)(1)	C	Yes	I					A					A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.	22.1006 (c)(2)	C	Yes	I					A					A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A	A														

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	22.1006(d) 22.1012-3(d)(1)	C	Yes	I						A	A			A		A	A				A	A		
52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.	22.1006(e)(1)	C	Yes	I						A	A			A								A		
52.222-49 Service Contract Act—Place of Performance Unknown.	22.1006(f) 22.1009-4(c)	C	Yes	I						A	A			A		A	A				A	A		
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A	A			A		A	A		A			
52.223-9 Estimate of Percentage of Recovered Material Content for EPA Designated Products.	23.406(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	
Alternate I	23.406(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	

FAC 2001-07 MAY 15, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																	
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC
52.223-10 Waste Reduction Program.	23.705	C	Yes	I					A	A					A			A				
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A	A													A		A	
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A			A		A			A		A		
52.223-13 Certification of Toxic Chemical Release Reporting.	23.907(a)	P	No	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R
52.223-14 Toxic Chemical Release Reporting.	23.907(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R
52.225-1 Buy American Act—Supplies.✓	25.1101 (a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A				A		A	A
52.225-2 Buy American Act Certificate.✓	25.1101 (a)(2)	P	No	K	A	A	A	A	A	A			A	A	A				A		A	

FAC 2001-07 MAY 15, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A	A					A	A	A				A		A		A
52.225-9 Buy American Act— <input checked="" type="checkbox"/> Construction Materials.	25.1102(a)	C	No									A	A										
52.225-10 Notice of Buy American <input checked="" type="checkbox"/> Act Requirement—Construction Materials.	25.1102(b)(1)	P	No									A	A										
Alternate I	25.110(b)(2)	P	No									A	A										

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-15 Sanctioned European Union Country End Products.	25.1103(c)	C	Yes	I	A	A																A	
52.225-16 Sanctioned European Union Country Services.	25.1103(c)	C	Yes	I			R	R	A	A	A	A			A	A	A	A	A	R	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(d)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.227-1 Authorization and Consent.	27.201-2(a)	C	Yes	I	A	A			A		A	A			A	A	A	A	A		O		
Alternate I	27.201-2(b)	C	Yes	I			A	A			A	A			A		A	A					
Alternate II	27.201-2(c)	C	Yes	I			A				A												
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.202-2	C	Yes	I	A	A																	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.227-3 Patent Indemnity.	27.203-1(b) 27.203-2(a) 27.203-4 (a)(2)	C	Yes	I	A	A			A	A										A			
Alternate I	27.203-2(b)	C	Yes	I	A	A			A	A										A			
Alternate II	27.203-2(b)	C	Yes	I	A	A			A	A					A					A			
Alternate III	27.203-2(c)	C	Yes	I											A						A		
52.227-4 Patent Indemnity— Construction Contracts.	27.203-5	C	Yes								A	A				A							
Alternate I	27.203-5	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.203-6	C	Yes	I	A	A	A	A	A	A	A	A				A		A	A				
52.227-6 Royalty Information.	27.204-2	P	No	K	A	A	A	A	A	A	A	A				A		A	A				
Alternate I	27.204-2	P	No	K											A			A					
52.227-7 Patents—Notice of Government Licensee.	27.204-3(c)	P	No	K	A	A	A	A	A	A	A	A				A	A		A	A			
52.227-9 Refund of Royalties.	27.206-2	C	Yes	I	A		A		A		A				A	A		A	A				
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.207-2	C	Yes	I	A	A	A	A	A	A	A	A				A	A		A	A			
52.227-11 Patent Rights—Retention by the Contractor (Short Form).	27.303(a)	C	Yes	I			A	A			A	A						A					
Alternate I	27.303(a)(3)	C	Yes	I			A	A			A	A						A					
Alternate II	27.303(a)(3)	C	Yes	I			A	A			A	A						A					
Alternate III	27.303(a)(4)	C	Yes	I			A	A			A	A											
Alternate IV	27.303(a)(5)	C	Yes	I			A	A			A	A											

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.227-12 Patent Rights—Retention by the Contractor (Long Form).	27.303(b)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(b)(2)	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(b)(2)	C	Yes	I			A	A			A	A					A						
52.227-13 Patent Rights—Acquisition by the Government.	27.303(c)	C	Yes	I			A	A			A	A					A						
Alternate I	27.303(c)(3)	C	Yes	I			A	A			A	A					A						
Alternate II	27.303(c)(3)	C	Yes	I			A	A			A	A					A						
52.227-14 Rights in Data—General.	27.409(a)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate I	27.409(b)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate II	27.409 (c) & (g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate III	27.409 (d) & (g)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
Alternate IV	27.409(e)	C	Yes	I	O	O	A	A	O	O			O	O	O	O		O	O	O	O		
Alternate V	27.409(f)	C	Yes	I	A	A	A	A	A	A			A	A	A	A		A	A	A	A		
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(g)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.227-16 Additional Data Requirements.	27.409(h)	C	Yes	I			A	A													A		
52.227-17 Rights in Data—Special Works.	27.409(i)	C	Yes	I	A	A	A	A	A	A	O	O	A		A		O				A		
52.227-18 Rights in Data—Existing Works.	27.409(j)	C	Yes	I	A	A	A	A	A	A			A		A		A		A		A		
52.227-19 Commercial Computer Software—Restricted Rights.	27.409(k)	C	Yes	I	A				A						A						A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(q)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-22 Major System—Minimum Rights.	27.409(r)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-23 Rights to Proposal Data (Technical).	27.409(s)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-1 Bid Guarantee.	28.101-2	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A		A		A		A	A		A	A	A	A		A				
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I			A		A						A			A	A				
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I										R								A	
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																	A	A	
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																	A		
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I							A	A	A			A							

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I							A	A	A				A						
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A	A					A						
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A			A	A	A		A	A	A	A		A	
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																	A		
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I							A	A											
Alternate I	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-4 Federal, State, and Local Taxes (Noncompetitive Contract).	29.401-4	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-5 Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	29.401-5	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A		A	
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A			
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A		A		A		A		A	A	A	A	A	A	A	A	A		
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																					
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI			
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
Alternate I	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.230-3 Disclosure and Consistency of Cost Accounting Practices.	30.201-4 (b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.230-4 Consistency in Cost Accounting Practices.	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.230-5 Cost Accounting Standards— Educational Institution.	30.301-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.230-6 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R					R														A	A	
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I				R																		
52.232-3 Payments under Personal Service Contracts.	32.111(a)(3)	C	Yes	I						A	A															
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																			R	A		
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes									R														
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I																				A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(b)	C	Yes	I									A										
Alternate I	32.111(b)	C	Yes	I									A										
Alternate II	32.111(b)	C	Yes	I									A										
52.232-8 Discounts for Prompt Payment.	32.111(c)(1)	C	Yes	I	A				A				A	A							A		
52.232-9 Limitation on Withholding of Payments.	32.111(c)(2)	C	Yes	I	A	A	A	A	A	A			A	A									
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(d)(1)	C	Yes														A						
52.232-11 Extras.	32.111(d)(2)	C	Yes	I	A				A				A							A	A	A	
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	32.412(c)	C	No	I		A		A		A		A		A	A		A	A	A	A		A	
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A		A		A					A	A		A	A	A	A			
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A		A		A					A	A			A	A	A			
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A			

FAC 2001-02 FEBRUARY 19, 2002

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate I	32.502-4(b)	C	Yes	I	A		A		A		A	A		A	A		A	A	A	A			
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																			
Alternate III	32.502-4(d)	C	Yes	I															A				
52.232-17 Interest.	32.617(a) and (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-18 Availability of Funds.	32.705-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-19 Availability of Funds for the Next Fiscal Year.	32.705-1(b)	C	Yes	I					A	A									A			A	
52.232-20 Limitation of Cost.	32.705-2(a)	C	Yes	I		A		A		A				A	A	A		A	A	A		A	
52.232-21 Limitation of Cost (Facilities).	32.705-2(b)	C	Yes	I														R					
52.232-22 Limitation of Funds.	32.705-2(c)	C	Yes	I		A		A		A				A	A	A		A	A	A			
52.232-23 Assignment of Claims.	32.806(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	32.806(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-24 Prohibition of Assignment of Claims.	32.806(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-28 Invitation to Propose Performance-Based Payments.	32.1005(b)(1)	P	No	L	A		A		A		A					A	A	A	A	A		A	
Alternate I	32.1005(b)(2)	P	No	L	A		A		A		A					A	A	A	A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-29 Terms for Financing of Purchases of Commercial Items.	32.206(b)(2)	C	No	I	A					A													A
52.232-30 Installment Payments for Commercial Items.	32.206(g)	C	Yes	I	A					A													A
52.232-31 Invitation to Propose Financing Terms.	32.205(b) 32.206	P	No	L	A					A													
52.232-32 Performance-Based Payments.	32.1005	C	No	I	A					A													
52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.	32.1110 (a), (a)(1), (b), and (e)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-34 Payment by Electronic Funds Transfer—Other than Central Contractor Registration.	32.1110 (a), (a)(2), (b), and (e)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.	32.1110(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-36 Payment by Third Party.	32.1110(d) and (e)(3)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-37 Multiple Payment Arrangements.	32.1110(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-38 Submission of Electronic Funds Transfer Information with Offer.	32.1110(g)	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-1 Disputes.	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.233-2 Service of Protest.	33.106(a)	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R		R
52.233-3 Protest after Award.	33.106(b)	C	Yes	I	R		R		R		R		R	R	A	R	A	A	R	A	R	R	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
Alternate I	33.106(b)	C	Yes	I		R		R		R		R				A		A	A		A		A	
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A																
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes							A														
52.236-2 Differing Site Conditions.	36.502	C	Yes							A							A					O		
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes							A							A					O		
52.236-4 Physical Data.	36.504	C	No							A												A		
52.236-5 Material and Workmanship.	36.505	C	Yes							R	R											A		
52.236-6 Superintendence by the Contractor.	36.506	C	Yes							A							A					O		
52.236-7 Permits and Responsibilities.	36.507	C	Yes							R	R						A					A		
52.236-8 Other Contracts.	36.508	C	Yes							A							A					O		
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes							A							A					O		
52.236-10 Operations and Storage Areas.	36.510	C	Yes							A							A					O		
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes							A												O		
52.236-12 Cleaning Up.	36.512	C	Yes							A							A					O		
52.236-13 Accident Prevention.	36.513	C	Yes							A							A					O		
Alternate I	36.513	C	Yes							A							A					O		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					FP SUB	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LG	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI		
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes									A						A					A		
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes									O													
52.236-16 Quantity Surveys.	36.516	C	Yes									O											O		
Alternate I	36.516	C	Yes									O													
52.236-17 Layout of Work.	36.517	C	Yes									A											A		
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.	36.518	C	Yes											R											
52.236-19 Organization and Direction of the Work.	36.519	C	Yes											R											
52.236-21 Specifications and Drawings for Construction.	36.521	C	Yes									A						A					O		
Alternate I	36.521	C	Yes									A						A					O		
Alternate II	36.521	C	Yes									A						A					O		
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes																A				O		
52.236-23 Responsibility of the Architect-Engineer Contractor.	36.609-2(b)	C	Yes																A						
52.236-24 Work Oversight in Architect-Engineer Contracts.	36.609-3	C	Yes																A						
52.236-25 Requirements for Registration of Designers.	36.609-4	C	Yes																A						
52.236-26 Preconstruction Conference.	36.522	C	Yes	I								A						A							

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.236-27 Site Visit (Construction).	36.523	P	Yes	L								A					A						
Alternate I	36.523	P	Yes	L								A					A						
52.236-28 Preparation of Proposals— Construction.	36.520	P	Yes	K								R	R										
52.237-1 Site Visit.	37.110(a)	P	Yes	L			A	A	A	A				A	A	A	A	A	A	A	A	A	A
52.237-2 Protection of Government Buildings, Equipment, and Vegetation.	37.110(b)	C	Yes	I			A	A	A	A				A	A	A	A	A	A	A	A	A	A
52.237-3 Continuity of Services.	37.110(c)	C	Yes	I					O	O												O	
52.237-4 Payment by Government to Contractor.	37.304(a)	C	Yes	I													A					A	
Alternate I	37.304(a)	C	Yes	I													A					A	
52.237-5 Payment by Contractor to Government.	37.304(b)	C	Yes	I													A					A	
52.237-6 Incremental Payment by Contractor to Government.	37.304(c)	C	Yes	I													A					A	
52.237-7 Indemnification and Medical Liability Insurance.	37.403	C	Yes	I					A	A				A						A		O	
52.237-8 Restriction on Severance Payments to Foreign Nationals.	37.113-2(a)	P	Yes	K		A		A		A		A	A	A	A	A	A	A		A	A		
52.237-10 Identification of Uncompensated Overtime.	37.115-3	P	Yes	L					A	A				A									
52.239-1 Privacy or Security Safeguards. (See Note 4.)	39.107	C	Yes	I	A	A	A	A	A	A				A				A	A		A		A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.241-1 Electric Service Territory Compliance Representation.	41.501(b)	P	No	K																		A	A	
52.241-2 Order of Precedence— Utilities.	41.501(c)(1)	C	Yes	I																		O	R	
52.241-3 Scope of Duration of Contract.	41.501(c)(2)	C	No	I																		O	R	
52.241-4 Change in Class of Service.	41.501(c)(3)	C	Yes	I																		O	R	
52.241-5 Contractor's Facilities.	41.501(c)(4)	C	Yes	I																		O	R	
52.241-6 Service Provisions.	41.501(c)(5)	C	No	I																		O	R	
52.241-7 Change in Rates or Terms and Conditions of Service for Regulated Services.	41.501(d)(1)	C	No	I																		O	A	
52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.	41.501(d)(2)	C	No	I																		O	A	
52.241-9 Connection Charge.	41.501(d)(3)	C	No	I																		O	A	
Alternate I	41.501(d)(3)	C	No	I																		O	A	
52.241-10 Termination Liability.	41.501(d)(4)	C	No	I																		O	A	
52.241-11 Multiple Service Locations.	41.501(d)(5)	C	Yes	I																		O	A	
52.241-12 Nonrefundable, Nonrecurring Service Charge.	41.501(d)(6)	C	No	I																		O	A	
52.241-13 Capital Credits.	41.501(d)(7)	C	No	I																		O	A	
52.242-1 Notice of Intent to Disallow Costs.	42.802	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	A	R	A	A		A	
52.242-2 Production Progress Reports.	42.1107(a)	C	Yes	I	A	A	A	A	A	A			A	A			A		A					

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.242-3 Penalties for Unallowable Costs.	42.709-6	C	Yes	I		A		A		A		A	A	A	A	A	A		A	A				
52.242-4 Certification of Final Indirect Costs.	42.703-2(f)	C	Yes	I		A		A		A		A	A	A	A	A	A		A	A				
52.242-10 F.o.b. Origin—Government Bills of Lading or Prepaid Postage.	42.1404-2(a)	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A			
52.242-11 F.o.b. Origin—Government Bills of Lading or Indicia Mail.	42.1404-2(b)	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A			
52.242-12 Report of Shipment (REPSHIP).	42.1406-2	C	Yes	I	A	A	A	A	A	A			A	A	A		A	A	A		A			
52.242-13 Bankruptcy.	42.903	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	R	
52.242-14 Suspension of Work.	42.1305(a)	C	Yes								A						A				A			
52.242-15 Stop-Work Order.	42.1305 (b)(1)	C	Yes	F	O	O	O	O	O	O				O								O		
Alternate I	42.1305 (b)(2)	C	Yes	F		O		O		O				O										
52.242-16 Stop-Work Order—Facilities.	42.1305(c)	C	Yes	F														A						
52.242-17 Government Delay of Work.	42.1305(d)	C	Yes	F	A					O				A								A		
52.243-1 Changes—Fixed Price.	43.205(a)(1)	C	Yes	I	R										R					A		A		
Alternate I	43.205(a)(2)	C	Yes	I						A												A	A	
Alternate II	43.205(a)(3)	C	Yes	I						A												A		
Alternate III	43.205(a)(4)	C	Yes	I						A							A							
Alternate IV	43.205(a)(5)	C	Yes	I																		A	A	
Alternate V	43.205(a)(6)	C	Yes	I			O															O		
52.243-2 Changes—Cost Reimbursement.	43.205(b)(1)	C	Yes	I		R																		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate I	43.205(b)(2)	C	Yes	I							A												
Alternate II	43.205(b)(3)	C	Yes	I							A												
Alternate III	43.205(b)(4)	C	Yes	I									A										
Alternate IV	43.205(b)(5)	C	Yes	I																		A	
Alternate V	43.205(b)(6)	C	Yes	I																			
52.243-3 Changes—Time-and-Materials or Labor-Hours.	43.205(c)	C	Yes	I										R									
52.243-4 Changes.	43.205(d)	C	Yes	I								A						R					
52.243-5 Changes and Changed Conditions.	43.205(e)	C	Yes	I								A										A	
52.243-6 Change Order Accounting.	43.205(f)	C	Yes	I	O	O	O	O							O								
52.243-7 Notification of Changes.	43.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O
52.244-2 Subcontracts. (See Note 1.)	44.204(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I (See Note 1.)	44.204(a)(2)(i)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A	A	A	
Alternate II (See Note 1.)	44.204(a)(2)(ii)	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A	A	A	
52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	44.204(b)	C	Yes	I																			
52.244-5 Competition in Subcontracting.	44.204(c)	C	Yes	I	A	A	A	A	A	A		A		A		A	A	A			A		A
52.244-6 Subcontracts for Commercial Items.	44.403	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.245-1 Property Records.	45.106(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.245-2 Government Property (Fixed-Price Contracts).	45.106(b)(1)	C	Yes	I	A		A		A		A				A		A		A	A		A	A	
Alternate I	45.106(b)(2)	C	Yes	I	A		A		A						A		A			A		A	A	
Alternate II	45.106(b)(3)	C	Yes	I			A										A							
52.245-3 Identification of Government-Furnished Property.	45.106(c)	C	Yes	I							A											A		
52.245-4 Government-Furnished Property (Short Form).	45.106(d)	C	Yes	I	O		O		O		O		O	O		O			O		O	O		
52.245-5 Government Property (Cost-Reimbursement, Time-and-Material or Labor-Hour Contracts).	45.106(f)(1)	C	Yes	I		A		A		A		A	A				A			A			A	
Alternate I	45.106(f)(2)	C	Yes	I				A					A											
52.245-6 Liability for Government Property (Demolition Services Contracts).	45.106(g)	C	Yes	I													R					A		
52.245-7 Government Property (Consolidated Facilities).	45.302-6(a)	C	Yes	I																				A
52.245-8 Liability for the Facilities.	45.302-6(b)	C	Yes	I																				A
52.245-9 Use and Charges.	45.302-6(c)	C	Yes	I	A		A		A		A				A		A						A	
52.245-10 Government Property (Facilities Acquisition).	45.302-6(d)	C	Yes	I																				A
52.245-11 Government Property (Facilities Use).	45.302-6 (e)(1)	C	Yes	I																				A
Alternate I	45.302-6 (e)(2)	C	Yes	I																				A
52.245-12 Contract Purpose (Nonprofit Educational Institutions).	45.302-7(a)	C	Yes	I																				O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.246-6 Inspection—Time-and-Material and Labor-Hour.	46.306	C	Yes	E										R									
Alternate I	46.306	C	Yes	E										A								O	
52.246-7 Inspection of Research and Development—Fixed Price.	46.307(a)	C	Yes	E			A															O	
52.246-8 Inspection of Research and Development—Cost Reimbursement.	46.308	C	Yes	E				A															
Alternate I	46.308	C	Yes	E				A															
52.246-9 Inspection of Research and Development (Short Form).	46.309	C	Yes	E			A	A														O	
52.246-10 Inspection of Facilities.	46.310	C	Yes	E														R					
52.246-11 Higher-Level Contract Quality Requirement.	46.311	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.246-12 Inspection of Construction.	46.312	C	Yes								A	A										O	
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	C	Yes														R					A	
52.246-14 Inspection of Transportation.	46.314	C	Yes	E																		A	A
52.246-15 Certificate of Conformance.	46.315	C	Yes	E	A	A	A	A	A	A					A						A		A
52.246-16 Responsibility for Supplies.	46.316	C	Yes	E	A		A		A						A							O	
52.246-17 Warranty of Supplies of a Noncomplex Nature.	46.710(a)(1)	C	Yes	I	O										O						O		
Alternate I	46.710(a)(2)	C	Yes	I	O										O						O		
Alternate II	46.710(a)(3)	C	Yes	I	O										O						O		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate III	46.710(a)(4)	C	Yes	I	O										O					O			
Alternate IV	46.710(a)(5)	C	Yes	I	O										O								
Alternate V	46.710(a)(6)	C	Yes	I	O										O					O			
52.246-18 Warranty of Supplies of a Complex Nature.	46.710(b)(1)	C	Yes	I	O		O								O					O			
Alternate I [Reserved]																							
Alternate II	46.710(b)(2)	C	Yes	I	O		O								O					O			
Alternate III	46.710(b)(3)	C	Yes	I	O		O								O					O			
Alternate IV	46.710(b)(4)	C	Yes	I	O		O								O					O			
52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	46.710(c)(1)	C	Yes	I	O		O		O						O								
Alternate I	46.710(c)(2)	C	Yes	I	O		O		O						O								
Alternate II	46.710(c)(3)	C	Yes	I	O		O		O						O								
Alternate III	46.710(c)(4)	C	Yes	I	O		O		O						O								
52.246-20 Warranty of Services.	46.710(d)	C	Yes	I					O							O				O	O		
52.246-21 Warranty of Construction.	46.710(e)(1)	C	Yes									O										O	
Alternate I	46.710(e)(2)	C	Yes									O										O	
52.246-23 Limitation of Liability.	46.805	C	Yes	I	A	A	A	A							A					A		O	
52.246-24 Limitation of Liability—High-Value Items.	46.805(a)	C	Yes	I	A	A	A	A							A					A			
Alternate I	46.805(a)	C	Yes	I	A	A	A	A						A	A					A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.246-25 Limitation of Liability— Services.	46.805(a)(4)	C	Yes	I			A	A	A	A			A					A	A	A	O	A	
52.247-1 Commercial Bill of Lading Notations.	47.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	A	
52.247-2 Permits, Authorities, or Franchises.	47.207-1(a)	C	No	I																	A	A	
52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.	47.207-1 (b)(1)	C	Yes	I																	A	A	
Alternate I	47.207-1 (b)(2)	C	Yes	I																		A	
52.247-4 Inspection of Shipping and Receiving Facilities.	47.207-1(c)	P	Yes	L																	A		
52.247-5 Familiarization with Conditions.	47.207-1(d)	C	Yes	I																	A	A	
52.247-6 Financial Statement.	47.207-1(e)	P	Yes	L																	A	A	
52.247-7 Freight Excluded.	47.207-3(d)(2)	C	Yes	I																	A	A	
52.247-8 Estimated Weights or Quantities Not Guaranteed.	47.207-3(e)(2)	C	Yes	I																	A	A	
52.247-9 Agreed Weight—General Freight.	47.207-4(a)(1)	C	Yes	I																	A	A	
52.247-10 Net Weight—General Freight.	47.207-4(a)(2)	C	Yes	I																	A	A	
52.247-11 Net Weight—Household Goods or Office Furniture.	47.207-4(b)	C	Yes	I																	A	A	
52.247-12 Supervision, Labor, or Materials.	47.207-5(b)	C	Yes	I																	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.247-13 Accessorial Services— Moving Contracts.	47.207-5(c)	C	Yes	I																	A	A		
52.247-14 Contractor Responsibility for Receipt of Shipment.	47.207-5(d)	C	Yes	I																	A	A		
52.247-15 Contractor Responsibility for Loading and Unloading.	47.207-5(e)	C	Yes	I																	A	A		
52.247-16 Contractor Responsibility for Returning Undelivered Freight.	47.207-5(f)	C	Yes	I																	A	A		
52.247-17 Charges.	47.207-6 (a)(2)	C	Yes	I																	A	A		
52.247-18 Multiple Shipments.	47.207-6(c)(5)(i)	C	Yes	I																	A	A		
52.247-19 Stopping in Transit for Partial Uploading.	47.207-6(c)(5)(ii)	C	No	I																	A	A		
52.247-20 Estimated Quantities or Weights for Evaluation of Offers.	47.207-6 (c)(6)	P	Yes	M																	A	A		
52.247-21 Contractor Liability for Personal Injury and/or Property Damage.	47.207-7(c)	C	Yes	I																	A	A		
52.247-22 Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.	47.207-7(d)	C	Yes	I																	A	A		
52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.	47.207-7(e)	C	Yes	I																	A	A		
52.247-24 Advance Notification by the Government.	47.207-8 (a)(1)	C	Yes	I																	A	A		
52.247-25 Government-Furnished Equipment With or Without Operators.	47.207-8 (a)(2)(i)	C	Yes	I																	A	A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI		
52.247-26 Government Direction and Marking.	47.207-8 (a)(3)	C	Yes	I																	A	A			
52.247-27 Contract Not Affected by Oral Agreement.	47.207-8(b)	C	Yes	I																		A	A		
52.247-28 Contractor's Invoices.	47.207-9(c)	C	Yes	I																		A	A		
52.247-29 F.o.b. Origin.	47.303-1(c)	C	Yes	F	A									A							A		A		
52.247-30 F.o.b. Origin, Contractor's Facility.	47.303-2(c)	C	Yes	F	A									A							A		A		
52.247-31 F.o.b. Origin, Freight Allowed.	47.303-3(c)	C	Yes	F	A									A							A		A		
52.247-32 F.o.b. Origin, Freight Prepaid.	47.303-4(c)	C	Yes	F	A									A							A		A		
52.247-33 F.o.b. Origin, with Differentials.	47.303-5(c)	C	No	F	A						A			A							A		A		
52.247-34 F.o.b. Destination.	47.303-6(c)	C	Yes	F	A									A							A		A		
52.247-35 F.o.b. Destination, within Consignee's Premises.	47.303-7(c)	C	Yes	F	A									A							A		A		
52.247-36 F.a.s. Vessel, Port of Shipment.	47.303-8(c)	C	Yes	F	A									A							A		A		
52.247-37 F.o.b. Vessel, Port of Shipment.	47.303-9(c)	C	Yes	F	A									A							A		A		
52.247-38 F.o.b. Inland Carrier, Point of Exportation.	47.303-10(c)	C	Yes	F	A									A							A		A		
52.247-39 F.o.b. Inland Point, Country of Importation.	47.303-11(c)	C	Yes	F	A									A							A		A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.	47.303-12(c)	C	Yes	F	A										A					A		A		
52.247-41 C.&f. Destination.	47.303-13(c)	C	Yes	F	A										A					A		A		
52.247-42 C.i.f. Destination.	47.303-14(c)	C	Yes	F	A										A					A		A		
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303-15(c)	C	Yes	F	A										A					A		A		
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303-16(c)	C	Yes	F	A										A					A		A		
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.	47.305-2(b)	P	Yes	L	A										A					A		A		
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305-3 (b)(4)(ii)	P	Yes	L	A										A					A		A		
52.247-47 Evaluation—F.o.b. Origin.	47.305-3 (f)(2)	P	Yes	M	A										A					A		A		
52.247-48 F.o.b. Destination—Evidence of Shipment.	47.305-4(c)	C	Yes	F	A										A					A		A		
52.247-49 Destination Unknown.	47.305-5 (b)(2)	P	Yes	M	A										A					A		A		
52.247-50 No Evaluation of Transportation Costs.	47.305-5 (c)(1)	P	Yes	M	A										A					A		A		
52.247-51 Evaluation of Export Offers.	47.305-6(e)	P	No	M	A										A					A		A		
Alternate I	47.305-6 (e)(1)	P	No	M	A										A					A		A		
Alternate II	47.305-6 (e)(2)	P	No	M	A										A					A		A		
Alternate III	47.305-6 (e)(3)	P	No	M	A										A					A		A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	47.305-6 (f)(2)	C	Yes	F	A							A			A					A		A	
52.247-53 Freight Classification Description.	47.305-9 (b)(1)	P	No	K	A										A					A		A	
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.	47.305-12 (a)(2)	C	Yes	F	A										A					A		A	
52.247-56 Transit Arrangements.	47.305-13 (a)(3)(ii)	P	No	M	A										A					A			
52.247-57 Transportation Transit Privilege Credits.	47.305-13 (b)(4)	C	No	F	A										A					A		A	
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15 (a)(2)	C	Yes	F	A										A					A		A	
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A										A					A		A	
52.247-60 Guaranteed Shipping Characteristics.	47.305-16 (b)(1)	C	No	F	A										A					A			
52.247-61 F.o.b. Origin—Minimum Size of Shipments.	47.305-16(c)	C	Yes	F	A										A					A		A	
52.247-62 Specific Quantities Unknown.	47.305-16 (d)(2)	C	No	F	A										A					A		A	
52.247-63 Preference for U.S.-Flag Air Carriers.	47.405	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.	47.507(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A
Alternate I	47.507(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A		A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																			
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
Alternate II	47.507(c)	C		I								A	A											
52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.	47.303-17(f)	C	Yes	F	A										A					A		A		
52.247-66 Returnable Cylinders.	47.305-17	C	No	I	A				A		A					A				A				
52.247-67 Submission of Commercial Transportation Bills to the General Services Administration for Audit.	47.104-4(c)	C	No	I	A	A	A	A	A	A	A	A	A	A			A			A	A	A		
52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A			A	A	A	A			A	A	A		A	
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A			A	A	A	A			A	A	A		A	
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A			A	A	A	A			A	A	A		A	
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A		A	
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes															A						
52.248-3 Value Engineering—Construction.	48.202	C	Yes									A	A											
Alternate I	48.202	C	Yes									A	A											
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A		A		A					A	A		A			A	A	A	A	
Alternate I	49.502(a)(2)	C	Yes	I													A							
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502 (b)(1)(i)	C	Yes	I	A		A		A					A	A					A	A		A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI		
Alternate I	49.502 (b)(1)(ii)	C	Yes	I								A													
Alternate II	49.502 (b)(1)(iii)	C	Yes	I	A		A		A					A	A					A	A		A		
Alternate III	49.502 (b)(1)(iii)	C	Yes	I								A													
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I													A								
Alternate I	49.502(b)(2)	C	Yes	I													A								
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I					A													A	A		
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I			A	A														A			
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I		A		A		A					A	A	A		A	A	A		A		
Alternate I	49.503(a)(2)	C	Yes									A													
Alternate II	49.503(a)(3)	C	Yes	I		A		A		A					A	A	A		A	A	A		A		
Alternate III	49.503(a)(3)	C	Yes											A											
Alternate IV	49.503(a)(4)	C	Yes	I											A										
Alternate V	49.503(a)(4)	C	Yes	I											A										
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes															A				A			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A					A					A				A		O	A	
Alternate I	49.504(a)(2)	C	Yes	I																A	O		
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A														O		
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes								A										O		
Alternate I	49.504(c)(2)	C	Yes													A					O		
Alternate II	49.504(c)(3)	C	Yes								O										O		
Alternate III	49.504(c)(3)	C	Yes													A					O		
52.249-11 Termination of Work (Consolidated Facilities or Facilities Acquisition).	49.505(a)	C	Yes	I														A					
Alternate I	49.505(a)	C	Yes	I														A					
52.249-12 Termination (Personal Services).	49.505(b)	C	Yes	I					A	A											A		
52.249-13 Failure to Perform.	49.505(c)	C	Yes	I														A					
52.249-14 Excusable Delays.	49.505(d)	C	Yes	I		A		A		A			A					A			A		
52.250-1 Indemnification under Public Law 85-804.	50.403-3	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.403-3	C	Yes	I		A		A		A		A		A	A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A		A	A	A	A	A
Alternate I	51.107	C	Yes	I														A					

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I		A		A		A		A			A								
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

NOTE 1:

The following clauses are prescribed for use in letter contracts:

52.216-23, Execution and Commencement of Work.

52.216-24, Limitation of Government Liability.

52.216-25, Contract Definitization.

52.216-25, Contract Definitization, Alternate I.

52.216-26, Payments of Allowable Costs Before Definitization.

52.232-16, Progress Payments, Alternate II.

52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts).

52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), Alternate I.

Further instructions concerning provisions and clauses for letter contracts are set forth in 16.603-4(a).

NOTE 2:

MMAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in MMAR 12.302.

NOTE 3:

The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts:

52.239-1, Privacy or Security Safeguards. "A".

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Destruction or	abandonment.	45.611
	Sureties and Other Security for Bonds:	Acceptability of assets.	28.203-2
	Sureties and Other Security for Bonds:	Acceptability of corporate sureties.	28.202
	Sureties and Other Security for Bonds:	Acceptability of individual sureties.	28.203
		Acceptable Material	11.3
	Definition:	Acceptance	46.101 52.246-17 52.246-18 52.246-19 52.246-20
	Criteria for	acceptance and negotiation of an unsolicited proposal.	15.607
	Period for	Acceptance of Bids.	52.214-15
	Solicitation and	acceptance of gratuities by Government personnel.	3.101-2
	Sureties and Other Security for Bonds	Acceptance of real property.	28.203-3
	Definition:	Acceptance period	52.214-16
	Minimum Bid	Acceptance Period.	52.214-16
	Federal Supply Schedules: Inspection and	acceptance.	8.405-3
	Quality Assurance: Place of	acceptance.	46.503
	Quality Assurance: Responsibility for	acceptance.	46.502
	Selecting and Developing Requirements Documents: Market	acceptance.	11.103
	Unique Requirements Regarding Terms and Conditions for Commercial Items:	Acceptance.	12.402
		Accessorial Services—Moving Contracts.	52.247-13
	Definition:	Accessory item	45.501
	Construction and Architect-Engineer Contracts:	Accident prevention.	36.513 52.236-13
		Accountable Facilities (Nonprofit Educational Institutions).	52.245-13
		Accounting for contractor inventory.	45.615
		Accounting for unallowable costs.	31.201-6
	Availability of	accounting guide.	31.002
	Schedule of	accounting information.	49.602-3
	Financial and cost	accounting records.	4.705-1
	Initiation of progress payments and review of	accounting system.	32.503-3
	Change Order	Accounting.	52.243-6
	Definition:	Accrual of a claim	33.201

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Accrued benefit cost method	31.001
	Definition:	Accumulating costs	31.001
		Acquiring special test equipment.	45.307-2
		Acquiring Utility Services.	41.2
	Definition:	Acquisition	2.101
	Foreign	Acquisition	Part 25
	Major System	Acquisition	Part 34
		Acquisition and supply records.	4.705-3
	Patent Rights—	Acquisition by the Government.	52.227-13
	Equipment Lease or Purchase:	Acquisition considerations.	7.401
	Delay of	acquisition dates over 60 days.	22.1014
	Announcements of long-range	acquisition estimates.	5.404-2
	Required Sources of Supplies and Services:	Acquisition from Federal Prison Industries, Inc.	8.6
	Required Sources of Supplies and Services:	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled	8.7
	Exchange of	acquisition information.	5.405
	Sealed Bidding: Release of	acquisition information.	14.211
	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the	Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
		Acquisition methods.	7.402
	Simplified	Acquisition Methods.	13.3
		Acquisition of Commercial Items	Part 12
	Special Requirements for the	Acquisition of Commercial Items	12.2
	Forms:	Acquisition of commercial items.	53.212
		Acquisition of data.	27.406
		Acquisition of Helium	8.5
		Acquisition of Information Technology	Part 39
	Required Sources of Supplies and Services:	Acquisition of Printing and Related Supplies	8.8
		Acquisition of Utility Services	Part 41
	Definition:	Acquisition planning	2.101
		Acquisition Planning	Part 7
	Contents of written	acquisition plans.	7.105
	Simplified	acquisition procedures (SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348).	53.213
	Agency	Acquisition Regulations	1.3

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Special	acquisition requirements.	37.114
	Definition:	Acquisition savings	48.001 52.248-1
	Sharing	acquisition savings.	48.104-2
	Major System Acquisition:	Acquisition strategy.	34.004
	Definition:	Acquisition streamlining	7.101
	Statement of guiding principles for the Federal	Acquisition System.	1.102
	Guiding principles for the	Acquisition Team.	1.102-3
	Role of the	Acquisition Team.	1.102-4
	Termination of Work (Consolidated Facilities or Facilities	Acquisition).	52.249-11
	Insufficient causes for not setting aside an	acquisition.	19.502-5
	Government Property—Facilities	Acquisition.	52.245-10
	Application of Labor Laws to Government	Acquisitions	Part 22
	Terms and Conditions—Simplified	Acquisitions (Other Than Commercial Items).	52.213-4
	Application of labor laws to Government	acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).	53.222
	Government contract quality assurance for	acquisitions at or below the simplified acquisition threshold.	46.404
	Additional requirements for	acquisitions involving bundling.	7.107
	Contractor Qualifications:	Acquisitions subject to qualification requirements.	9.206
	Encouraging small business participation in	acquisitions.	19.202-1
	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper	Activity.	52.203-8
	Contract Work Hours and Safety Standards	Act—Overtime Compensation.	52.222-4
	Service Contract	Act—Place of Performance Unknown.	52.222-49
	Fair Labor Standards Act and Service Contract	Act—Price Adjustment (Multiple Year and Option Contracts).	52.222-43
	Fair Labor Standards Act and Service Contract	Act—Price Adjustment.	52.222-44
	Definition:	Actual cash value	31.001
	Definition:	Actual costs	31.001
	Definition:	Actuarial accrued liability	31.001
	Definition:	Actuarial assumption	31.001
	Definition:	Actuarial cost method	31.001
	Definition:	Actuarial gain and loss	31.001
	Definition:	Actuarial valuation	31.001
		Additional Foreign Acquisition Regulations	25.10
	Definition:	Adequate evidence	2.101
		Adjustment for loss.	49.203
		Adjustment of fee.	49.305

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Adjustment of indirect costs.	49.303-4
	Establishing and	Administering Federal Supply Schedules	38.2
	Closeout by the office	administering the contract.	4.804-1
	Closeout of the contracting office files if another office	administers the contract.	4.804-2
	Cost Accounting Standards	Administration	Part 30
	Contract	Administration and Audit Services	Part 42
		Administration and payment of commercial financing payments.	32.207
		Administration and payment of performance-based payments.	32.1007
		Administration of Cost Accounting Standards.	52.230-6
		Administration of progress payments.	32.503-5
	First Article Testing and Approval: Government	administration procedures.	9.307
	Contract	administration responsibilities.	42.201
	Contract	Administration Services	42.2
	Contract	administration services directory.	42.203
	Assignment of contract	administration.	42.202
	Contract pricing and	administration.	22.101-2
	Bonds and Other Financial Protections:	Administration.	28.106
	Change Orders	Administration.	43.204
	Definition:	Administrative change	43.101
	Definition: Contracting officer/ Service Contract Act of 1965, As Amended:	Administrative contracting officer (ACO)	2.101
		Administrative limitations, variations, tolerances, and exemptions.	22.1003-4
		Administrative Matters	Part 4 53.204
	Definition:	Administrator, or Administrator, Wage and Hour Division	22.001
		Advance agreements.	31.109
	Traffic and Transportation Management:	Advance notice.	42.1406-1
	Distribution of	advance notices and solicitations.	36.211
	Transportation:	Advance Notification by the Government.	52.247-24
	Consent to Subcontracts:	Advance notification requirements.	44.201-2
	Clauses for contracting in	advance of funds.	32.705-1
	Contract Financing:	Advance Payments for Non-Commercial Items.	32.4 52.232-12
	Definition:	Advertisement	5.501
	Paid	Advertisements	5.5 53.205-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Use of	advertising agencies.	5.504
	Contracts with Commercial Organizations: Public relations and	advertising costs.	31.205-1
	Definition:	Advertising material	15.601
	Definition:	Advisory and assistance services	2.101
		Advisory and Assistance Services	37.2
	Multiple Awards for	Advisory and Assistance Services.	52.216-28
	Solicitation and Receipt of Proposals and Information:	Advisory multi-step process.	15.202
	Competition	Advocates	6.5
	Definition:	Affiliates	2.101 9.403
		Affirmative Action Compliance Requirements for Construction.	22.804-2 52.222-25 52.222-27
		Affirmative Action for Workers with Disabilities.	52.222-36
	Definition:	Affirmative action program	22.801
	Agency	affirmative procurement programs.	23.404
	Definition:	After-imposed tax	52.229-4 52.229-6
	Definition:	After-relieved tax	52.229-4 52.229-6
	Definition:	Agency	3.801 9.403 24.101 52.203-12
		Agency affirmative procurement programs.	23.404
		Agency distribution requirements.	4.202
	Definition:	Agency ethics official	3.104-1
		Agency forms.	53.303
	Definition:	Agency head (see "head of the agency")	2.101 52.202-1
	Definition:	Agency labor advisor	22.1001
	Market research and description of	agency need.	12.202
	Describing	Agency Needs	Part 11
		Agency regulations.	3.101-3
	Reporting, Redistribution, and Disposal of Contractor Inventory:	Agency screening.	45.608-3
	Acquisition Plans:	Agency-head responsibilities.	7.103

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Agency-peculiar property	45.301
		Agreed Weight—General Freight.	52.247-9
		Agreement for special account at a financial institution.	32.411
		Agreement on Trade in Civil Aircraft.	25.407
	Novation and Change-of-Name Agreements:	Agreement to recognize contractor's change of name.	42.1205
	Memorandum of pricing	agreement with refund.	32.609
	International	agreement.	6.302-4
	Contract Not Affected by Oral	Agreement.	52.247-27
	Use of patented technology under the North American Free Trade	Agreement.	27.208
	Forms for Settlement of Terminated Contracts: Settlement	agreement. (SF 30)	49.602-5
	Foreign License and Technical Assistance	Agreements	27.6
	Forward Pricing Rate	Agreements	42.17
	Novation and Change-of-Name	Agreements	42.12
	Delivery orders and orders under basic ordering	agreements (OF 347).	53.216-1
	Novation and change-of-name	agreements (SF 30).	53.242-1
	Air transport	agreements between the United States and foreign governments.	47.403-2
	Availability of term contracts and basic ordering	agreements for transportation or for transportation-related services.	47.205
	Acquiring Utility Services: Interagency	agreements.	41.206
	Advance	agreements.	31.109
	Applicability of novation	agreements.	42.1204
	Basic ordering	agreements.	16.703
	Contract Administration and Audit Services: Interagency	agreements.	42.002
	Employment of Workers with Disabilities: Collective bargaining	agreements.	22.1405
	Formats for termination for convenience settlement	agreements.	49.603
	Forward pricing rate	agreements.	15.407-3
	Processing	agreements.	42.1203
	Responsibility for executing	agreements.	42.1202
	Settlement	agreements.	49.109
	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans: Collective bargaining	agreements.	22.1307
	Sponsoring	agreements.	35.017-1
	Surety-takeover	agreements.	49.404
	F.o.b. Designated	Air Carrier's Terminal, Point of Exportation.	52.247-43
	F.o.b. Designated	Air Carrier's Terminal, Point of Importation.	52.247-44

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Refrigeration Equipment and	Air Conditioners.	52.223-12
	Definition:	Air freight forwarder	47.401
		Air freight forwarders.	47.404
	Clearance and Documentation Requirements—Shipments to DOD	Air or Water Terminal Transshipment Points.	52.247-52
	Air Transportation By U.S.-Flag Carriers:	Air transport agreements between the United States and foreign governments.	47.403-2
		Air Transportation by U.S.-Flag Carriers	47.4
	Costs of	alcoholic beverages.	31.205-51
	Definition:	All applicable Federal, State, and local taxes and duties	52.229-4
	Definition:	All applicable taxes and duties	52.229-6
	Definition:	All employment openings	52.222-35
	Sealed Bidding:	All or none qualifications.	14.404-5
	Determining	allocability.	31.201-4
	Definition:	Allocate	31.001
	Definition:	Allocation	8.701
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Allocation process.	8.705-3
	Defense Priority and	Allocation Requirements.	52.211-15
	Describing Agency Needs: Priorities and	Allocations	11.6
	Exceptions to general rules on	allowability and allocability.	31.106-2
	Determining	allowability.	31.201-2
	Cost Reimbursement Contracts:	Allowable Cost and Payment.	52.216-7
	Cost Reimbursement Contracts:	Allowable Cost and Payment—Facilities Use.	52.216-14
	Cost Reimbursement Contracts:	Allowable Cost and Payment—Facilities.	52.216-13
	Payments of	Allowable Costs Before Definitization.	52.216-26
		Alterations in Contract.	52.252-4
		Alterations in Solicitation.	52.252-3
	Definition:	Alternate	2.101
	Procedures for using	alternates.	52.105
	Definition:	Alternative dispute resolution (ADR)	33.201
		Alternative dispute resolution (ADR).	33.214
	Performance and payment bonds and	alternative payment protections for construction contracts.	28.102
		Alternative Payment Protections.	52.228-13
	Establishing or maintaining	alternative sources.	6.202
		Alternatives in lieu of corporate or individual sureties.	28.204

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Alternatives to Government-Unique Standards.	52.211-7
	Contracting by Negotiation:	Amending the solicitation.	15.206
		Amendments without consideration.	50.302-1
	Contract modifications (options, extensions, changes in scope) and	anniversary dates.	22.1008-6
		Announcement of contract awards.	5.303
		Announcements of long-range acquisition estimates.	5.404-2
	Contracting by Negotiation:	Annual Representations and Certifications—Negotiation.	52.215-7
		Anti-Kickback Procedures.	52.203-7
	Reports of Suspected	Antitrust Violations.	3.3
	SBA	appeals.	19.810
	Wage determination	appeals.	22.404-11
	Contractor Versus Government Performance:	Appeals.	7.307
	Protests, Disputes, and	Appeals.	Part 33
		Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.	12.503
		Applicability of Certain Laws to the Acquisition of Commercial Items	12.5
		Application of Labor Laws to Government Acquisitions	Part 22
		Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).	53.222
	Incentive Contracts:	Application of predetermined, formula-type incentives.	16.402
	Definition:	Applied research	31.205-18
	Definition:	Applied research	35.001
	Selection, appointment, and termination of	appointment.	1.603
	Definition:	Apprentice	22.401
		Apprentices and trainees.	22.406-4 52.222-9
	Definition:	Approval	9.301
	First Article Testing and	Approval	9.3
		Approval of Contract.	52.204-1
		Approval of progress payment requests.	32.503-4
		Approval of the justification.	6.304
		Approval of Wage Rates.	52.222-16
	Contractors' Purchasing Systems Reviews: Disclosure of	approval status.	44.306
	Contractors' Purchasing Systems Reviews: Granting, withholding, or withdrawing	approval.	44.305

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Basic Labor Policies	Approvals.	22.103-4
	Definition:	Approved purchasing system	44.101 52.244-2
	Definition:	Approving authority	50.001
	Responsibility of the	Architect-Engineer Contractor.	52.236-23
	Contract Cost Principles and Procedures: Construction and	architect-engineer contracts.	31.105 31.201-7
	Work oversight in	architect-engineer contracts.	36.609-3 52.236-24
	Definition:	Architect-engineer services	2.101
		Architect-Engineer Services	36.6
		Architect-engineer services (SF's 252, 254, 255, 1421).	53.236-2
	Standard and Optional Forms for Contracting for Construction,	Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements	36.7
	Contracts for construction work or	architect-engineer services.	27.304-3
	Forms for use in contracting for	architect-engineer services.	36.702
	Subcontractors and Outside Associates and Consultants	Architect-Engineer Services.	52.244-4
	Government cost estimate for	architect-engineer work.	36.605
	Termination (Fixed-Price	Architect-Engineer).	52.249-7
	Value Engineering—	Architect-Engineer.	52.248-2
	Definition:	Areawide contract	41.101
	Providing Government production and research property	as is.	45.308
	Government Property Furnished	As Is.	52.245-19
	Loan Guarantees for Defense Production:	Asset formula.	32.304-3
	Pension Adjustments and	Asset Reversions.	52.215-15
		Asset valuations resulting from business combinations.	31.205-52
	Gains and losses on disposition or impairment of depreciable property or other capital	assets.	31.205-16
	Sureties and Other Security for Bonds: Acceptability of	assets.	28.203-2
	Sureties and Other Security for Bonds: Substitution of	assets.	28.203-4
	Pledges of	Assets.	52.228-11
	Extent of	assignee's protection.	32.804
	Corporate Administrative Contracting Officer:	Assignment and location.	42.602
	Definition:	Assignment of claims	2.101
		Assignment of claims under contracts.	32.304-5
		Assignment of claims.	32.1105

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Assignment of contract audit services.	42.102
	Production Surveillance and Reporting:	Assignment of criticality designator.	42.1105
		Assignment of rights under subcontracts.	49.108-8
	Single-agency	assignments of Government contract quality assurance.	46.408
	Notice and	Assistance Regarding Patent and Copyright Infringement.	52.227-2
	Furnishing	assistance to contractors.	51.104
	General Services Administration	assistance.	7.403
	Patents: Notice and	assistance.	27.202
	Subcontractors and Outside	Associates and Consultants (Architect-Engineer Services).	52.244-4
	Definition:	Attorney-in-fact	28.001
	Contracting by Negotiation:	Audit and Records—Negotiation.	52.215-2
	Sealed Bidding:	Audit and Records—Sealed Bidding.	52.214-26
		Audit of prime contract settlement proposals and subcontract settlements.	49.107
		Audit of property control system.	45.511
		Audit of settlement proposal.	49.303-3
	Contract	audit responsibilities.	42.101
	Contract	Audit Services	42.1
	Contract Administration and	Audit Services	Part 42
	Contract	audit services directory.	42.103
	Assignment of contract	audit services.	42.102
	Submission of Commercial Transportation Bills to the General Services Administration for	Audit.	52.247-67
	Indirect Cost Rates:	Auditor determination procedure.	42.705-2
	Permits,	Authorities, or Franchises.	52.247-2
	Contracting	authority and responsibilities (SF 1402).	53.201-1
		Authority for use of warranties.	46.704
	Contract Modifications:	Authority to issue change orders.	43.202
	Career Development, Contracting	Authority, and Responsibilities	1.6
	Purpose,	Authority, Issuance	1.1
	Signatory	authority.	1.707
	Statutory and delegated	authority.	41.103
	Definition:	Authorization	41.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Authorization and consent.	27.201 27.201-2 52.227-1
		Authorization for subcontract settlements without approval or ratification.	49.108-4
		Authorization to use Government supply sources.	51.102
	Advance Payments for Non-Commercial Items: Findings, determination, and	authorization.	32.410
		Authorized Deviations in Clauses.	52.252-6
		Authorized Deviations in Provisions.	52.252-5
	Definition:	Authorized individual	13.001
	Definition:	Authorized official of an agency	3.901
	Definition:	Authorized official of the Department of Justice	3.901
		Authorized or required by statute.	6.302-5
	Definition:	Authorized program	11.601
	Contractor Use and Rental of Government Property:	Authorizing use of Government production and research property.	45.402
	Definition:	Auxiliary item	45.501
		Availability and unavailability of U.S.-flag air carrier service.	47.403-1
		Availability and use of utility services.	36.514
		Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-4
		Availability of Funds for the Next Fiscal Year.	52.232-19
	Contracts conditioned upon	availability of funds.	32.703-2
	Contract Modifications:	Availability of funds.	43.105 52.232-18
	Determining	availability of private commercial sources.	7.303
	Notice of	Availability of Progress Payments Exclusively for Small Business Concerns.	52.232-14
	Publicizing Contract Actions:	Availability of solicitations.	5.102
		Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
		Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.	52.211-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-3
	Identification and	availability of specifications.	11.201
		Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.	47.205
	Other Than Full and Open Competition:	Availability of the justification.	6.305
	Soliciting competition, evaluation of quotations or offers,	award and documentation.	13.106
	Sealed Bidding:	Award of classified contracts.	14.409-2
	Opening of Bids and	Award of Contract	14.4
	Sealed Bidding:	Award of unclassified contracts.	14.409-1
	Contracting by Negotiation:	Award to successful offeror.	15.504
	Contracting by Negotiation: Preaward,	Award, and Postaward Notifications, Protests, and Mistakes	15.5
	Special Contracting Methods:	Award, renewal, and extension.	17.605
	Acquisition of Commercial Items: Procedures for solicitation, evaluation, and	award.	12.203
	Construction and Architect-Engineer Contracts: Notice of	award.	36.213-4
	Contracting by Negotiation: Protests against	award.	15.507
	Evaluation for	award.	35.008
	Opportunity for qualification before	award.	9.205
	Sealed Bidding: Documentation of	award.	14.408-7
	Sealed Bidding: Other mistakes disclosed before	award.	14.407-3
	Sealed Bidding: Protests against	award.	14.408-8
	Service Contract Act of 1965, As Amended: Notice of	award.	22.1017
	Sealed Bidding:	Award.	14.408
	Incentive Contracts: Cost-plus-	award-fee contracts.	16.405-2
	Multiple	Awards for Advisory and Assistance Services.	52.216-28
		Awards involving subcontracting plans.	19.705-5
	Preparation and transmittal of synopses of	awards.	5.302
	Recognition of judgments and arbitration	awards.	49.108-5
	Sealed Bidding: Mistakes after	awards.	14.407-4
	Single or Multiple	Awards.	52.216-27
		Bad debts.	31.205-3
	Certified or cashier's checks,	bank drafts, money orders, or currency.	28.204-2
		Bankruptcy	42.9
	Types of Contracts:	Basic Agreements.	16.7 16.702

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Management of Government Property in the Possession of Contractors:	Basic information.	45.505-1
		Basic Labor Policies	22.1
	Delivery orders and orders under	basic ordering agreements (OF 347).	53.216-1
	Availability of term contracts and	basic ordering agreements for transportation or for transportation-related services.	47.205
		Basic ordering agreements.	16.703 19.804-5
	Definition:	Basic research	2.101
	Definition:	Best practices	37.501
	Definition:	Best value	2.101
	Contracting by Negotiation:	Best value continuum.	15.101
	Definition:	Bid	28.001
	Minimum	Bid Acceptance Period.	52.214-16
	Independent research and development and	bid and proposal costs.	31.205-18
	Sealed Bidding:	Bid envelopes.	14.202-3
	Definition:	Bid guarantee	28.001
	Noncompliance with	bid guarantee requirements.	28.101-4
		Bid guarantees.	52.228-1
	Disclosure, protection, and marking of contractor	bid or proposal information and source selection information.	3.104-4
	Definition:	Bid sample	2.101
	Sealed Bidding:	Bid samples.	14.202-4 52.214-20
	Sealed Bidding:	Bid submission.	14.302
	Sealed Bidding: Receipt of an unreadable electronic	bid.	14.406
	Sealed Bidding: Failure to Submit	Bid.	52.214-9
	Definition:	Bidder	28.001
	Sealed Bidding: Responsible	bidder—reasonableness of price.	14.408-2
	Sealed Bidding: Notice to	bidders of rejection of all bids.	14.404-3
	Sealed Bidding: Information to	bidders.	14.409
	Sealed Bidding: Transmittal to prospective	bidders.	14.203-1
	Sealed Bidding: Explanation to Prospective	Bidders.	52.214-6
	Sealed Bidding:	Bidding time.	14.202-1
	Sealed Bidding: Elements of sealed	bidding.	14.101
	Sealed Bidding: Sealed	bidding.	Part 14 53.214

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Sealed Bidding: Step Two of Two-Step Sealed	Bidding.	52.214-25
	Sealed Bidding: Submission of	Bids	14.3
	Sealed Bidding: Evaluation of	Bids for Multiple Awards.	52.214-22
	Sealed Bidding: Telegraphic	bids.	14.202-2 52.214-13
	Sealed Bidding: Classified	bids.	14.402-2
	Sealed Bidding: Electronic	bids.	14.202-8
	Sealed Bidding: Equal low	bids.	14.408-6 19.202-3 52.219-2
	Sealed Bidding: Facsimile	bids.	14.202-7 52.214-31
	Sealed Bidding: Final review of invitations for	bids.	14.202-6
	Sealed Bidding: General rules for solicitation of	bids.	14.202
	Sealed Bidding: Methods of soliciting	bids.	14.203
	Sealed Bidding: Minor informalities or irregularities in	bids.	14.405
	Sealed Bidding: Mistakes in	bids.	14.407
	Sealed Bidding: Modification or withdrawal of	bids.	14.303
	Sealed Bidding: Notice to bidders of rejection of all	bids.	14.404-3
	Sealed Bidding: Opening of	bids.	14.402
	Sealed Bidding: Preparation of invitations for	bids.	14.201
	Sealed Bidding: Receipt and safeguarding of	bids.	14.401
	Sealed Bidding: Recording of	bids.	14.403
	Sealed Bidding: Records of invitations for bids and records of	bids.	14.204
	Sealed Bidding: Rejection of	bids.	14.404
	Sealed Bidding: Rejection of individual	bids.	14.404-2
	Sealed Bidding: Responsiveness of	bids.	14.301
	Sealed Bidding: Unclassified	bids.	14.402-1
	Special Aspects of Contracting for Construction: Invitations for	bids.	36.213-3
	Sealed Bidding: False Statements in	Bids.	52.214-4
	Sealed Bidding: Period for Acceptance of	Bids.	52.214-15
	Sealed Bidding: Preparation of	Bids.	52.214-12
	Sealed Bidding: Submission of	Bids.	52.214-5
	Sealed Bidding: Preparation of	Bids—Construction.	52.214-18
	Commercial	Bill of Lading Notations.	52.247-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Transportation (U.S. Government	Bill of Lading).	53.247
	Annotation and distribution of shipping and	billing documents.	47.207-9
	Definition:	Billing rate	42.701
	Indirect Cost Rates:	Billing rates.	42.704
	F.o.b. Origin—Government	Bills of Lading or Indicia Mail.	52.242-11
	F.o.b. Origin—Government	Bills of Lading or Prepaid Postage.	52.242-10
	Submission of Commercial Transportation	Bills to the General Services Administration for Audit.	52.247-67
	Definition:	Biobased product	23.701
		Blanket purchase agreements (BPAs).	13.303
	Surveys of nonprofit agencies serving people who are	blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.	9.107
	Acquisition from Nonprofit Agencies Employing People Who Are	Blind or Severely Disabled	8.7
	Loading,	Blocking, and Bracing of Freight Car Shipments.	52.247-58
	Definition:	Bona fide agency	3.401
	Definition:	Bona fide employee	3.401
	Definition:	Bond	28.001
	Additional	bond and security.	28.106-3
	Additional	Bond Security.	52.228-2
		Bonding costs.	31.205-4
	Sureties and Other Security for	Bonds	28.2
	Performance and payment	bonds and alternative payment protections for construction contracts.	28.102
		Bonds and bond-related forms.	28.106-1
		Bonds and insurance.	Part 28 53.228
		Bonds and Other Financial Protections	28.1
	Performance and payment	bonds for other than construction contracts.	28.103
	United States	bonds or notes.	28.204-1
	Dismantling, Demolition or Removal of Improvements:	Bonds or other security.	37.302
	Advance payment	bonds.	28.105-1
	Annual performance	bonds.	28.104
	Other types of	bonds.	28.105
	Patent infringement	bonds.	28.105-2
	Payment	bonds.	28.103-3
	Performance	bonds.	28.103-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Substitution of surety	bonds.	28.106-2
	Prospective Subcontractor Requests for	Bonds.	52.228-12
	Definition:	Borrower	32.301
	Loan Guarantees for Defense Production: Other	borrowing.	32.304-8
	Simplified Acquisition Methods: Blanket purchase agreements—	BPAs.	13.303
	Loading, Blocking, and	Bracing of Freight Car Shipments.	52.247-58
	Selecting and Developing Requirements Documents: Use of	brand name or equal purchase descriptions.	11.104
		Brand Name or Equal.	52.211-6
	Definition:	Broad agency announcement	2.101
	Definition:	Building, or work	22.401
	Definition:	Bundled contract	2.101
	Definition:	Bundling	2.101
	Additional requirements for acquisitions involving	bundling.	7.107
	Definition:	Bureau of Land Management	8.501 52.208-8
	Other Improper	Business Practices	3.5
	Improper	Business Practices and Personal Conflicts of Interest	Part 3
	Definition:	Business unit	2.101
	Trade,	business, technical, and professional activity costs.	31.205-43
	Waiver of	Buy American Act for Civil Aircraft and Related Articles.	52.225-7
		Buy American Act.	25.504-1
		Buy American Act—Construction Materials	25.2
		Buy American Act—Construction Materials Under Trade Agreements.	52.225-11
		Buy American Act—Construction Materials.	52.225-9
		Buy American Act—Supplies	25.1 52.225-1
	Definition:	Buying-in	3.501-1
	Improper Business Practices and Personal Conflicts of Interest:	Buying-in.	3.501
	Transportation in Supply Contracts:	C. & f. destination.	47.303-13 52.247-41
	Transportation in Supply Contracts:	C.i.f. destination.	47.303-14 52.247-42
		Calculation of retention periods.	4.704
	Definition:	Canadian end product	25.003 52.225-3, Alt I and II

FAC 2001-07 MAY 15, 2002

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Cancellation	17.103 52.217-2
	Definition:	Cancellation ceiling	17.103
	Definition:	Cancellation charge	17.103
		Cancellation of invitations after opening.	14.404-1
		Cancellation of invitations before opening.	14.209
	Notice of	cancellation or change.	28.302
		Cancellation Under Multiyear Contracts.	52.217-2
		Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	52.203-8
		Capability to Perform a Contract for the Relocation of a Federal Office.	52.247-3
		Capital Credits.	52.241-13
	Management of Government Property in the Possession of Contractors:	Care, maintenance, and use.	45.509
		Career Development, Contracting Authority, and Responsibilities	1.6
		Cargo Insurance.	52.228-9
	Definition:	Caribbean Basin country	25.003
	Definition:	Caribbean Basin country end product	25.003
	F.o.b. Origin—	Carload and Truckload Shipments.	52.247-59
	Definition:	Carrier, or commercial carrier	47.001
	F.o.b. Inland	Carrier, Point of Exportation.	52.247-38
	Preference for U.S.-Flag Air	Carriers.	52.247-63
		CAS Administration	30.6
		CAS applicability.	30.201-1
	Types of	CAS coverage.	30.201-2
		CAS Program Requirements	30.2
	Noncompliance with	CAS requirements.	30.602-2
	Certified or	cashier's checks, bank drafts, money orders, or currency.	28.204-2
	Definition:	Central nonprofit agency	8.701
	Issuing or denying a	Certificate of Competency (COC).	19.602-2
	Small business	Certificate of Competency.	37.108
	Acceptance:	Certificate of conformance.	46.504 46.315
		Certificate of Conformance.	52.246-15
		Certificate of Current Cost or Pricing Data.	15.406-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Loan Guarantees for Defense Production:	Certificate of eligibility.	32.304-2
		Certificate of Independent Price Determination.	52.203-2
	Indirect Cost Rates:	Certificate of indirect costs.	42.703-2
		Certification and disclosure.	3.803
		Certification of Eligibility.	52.222-15
		Certification of Final Indirect Costs.	52.242-4
		Certification of Toxic Chemical Release Reporting.	52.223-13
		Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.	9.408 52.209-5
		Certification Regarding Knowledge of Child Labor for Listed End Products.	52.222-18
	Evaluating the	certification.	3.103-2
	Protests, Disputes, and Appeals: Contractor	certification.	33.207
	Cost Accounting Standards Notices and	Certification.	52.230-1
	Recovered Material	Certification.	52.223-4
	Sealed Bidding: Annual submission of representations and	certifications.	14.213
	The need for further	certifications.	3.103-3
	Offeror Representations and	Certifications—Commercial Items.	52.212-3
		Certified or cashier's checks, bank drafts, money orders, or currency.	28.204-2
		Change in Class of Service.	52.241-4
		Change in Rates or Terms and Conditions of Service for Regulated Services.	52.241-7
		Change in Rates or Terms and Conditions of Service for Unregulated Services.	52.241-8
	Agreement to recognize contractor's	change of name.	42.1205
	Definition:	Change order	2.101
		Change order accounting procedures.	43.203
		Change Order Accounting.	52.243-6
		Change Orders	43.2
	Authority to issue	change orders.	43.202
	Processing value engineering	change proposals.	48.103
	Definition:	Change-of-name agreement	2.101
	Novation and	Change-of-Name Agreements	42.12
	Novation and	change-of-name agreements (SF 30).	53.242-1
	Required Sources of Supplies and Services:	Change-of-name and successor in interest procedures.	8.716

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Changes and Changed Conditions.	52.243-5
	Contract modifications (options, extensions, Notification of contract	changes in scope) and anniversary dates.	22.1008-6
	Unsettled contract	changes.	43.104
	Contract Modifications:	Changes.	49.114
	Notification of	Changes.	52.243-4
		Changes—Cost-Reimbursement.	52.243-7
		Changes—Fixed-Price.	52.243-2
		Changes—Time-and-Materials or Labor-Hours.	52.243-1
	Connection	Charge.	52.243-3
	Nonrefundable, Nonrecurring Service	Charge.	52.241-9
	Contracts for transportation or related services	Charges.	52.241-12
	Use and	Charges.	52.247-17
	Compliance	checking.	52.245-9
	Certified or cashier's	checks, bank drafts, money orders, or currency.	22.406-7
	Definition:	child care services	28.204-2
	Prohibition of Acquisition of Products Produced by Forced or Indentured	Child Labor	37.101
	Certification Regarding Knowledge of	Child Labor for Listed End Products.	22.15
		Child Labor—Cooperation with Authorities and Remedies.	52.222-18
		Circumstances permitting other than full and open competition.	52.222-19
		Citation of Government rate tenders.	6.302
	Definition:	Civil aircraft and related articles	47.104-5
	Definition:	Civil judgment	25.003
	Criminal and	civil penalties, and further administrative remedies.	52.225-7
		Civil penalties.	9.403
	Definition:	Claim	3.104-8
	Initiation of a	claim.	3.807
	Assignment of	claims.	33.201
	Suspected fraudulent	claims.	52.233-1
	Materials Management Acquisition Regulations System:	Class determinations and findings.	33.206
		Class deviations.	52.232-23
	Change in	Class of Service.	52.232-23
	Freight	Classification Description.	33.209
			1.703
			1.404
			52.241-4
			52.247-53

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Wage Rates: Additional	classifications.	22.406-3
	Definition:	Classified acquisition	2.101
	Sealed Bidding:	Classified bids.	14.402-2
	Definition:	Classified contract	2.101
	Sealed Bidding: Award of	classified contracts.	14.409-2
	Patents:	Classified contracts.	27.207
	Definition:	Classified information	2.101
	Safeguarding	Classified Information Within Industry	4.4
	Safeguarding	classified information within industry (DD Form 254, DD Form 441).	53.204-1
	Filing of Patent Applications—	Classified Subject Matter.	52.227-10
	Patents:	Clause for classified contracts.	27.207-2
		Clause for construction contracts and for dismantling, demolition, and removal of improvements contracts.	27.203-5
	Patents:	Clause for Government waiver of indemnity.	27.203-6
	Provision and	Clause Matrix.	52.3
	Patents:	Clause on notice and assistance.	27.202-2
	Basic rights in data	clause.	27.404
		Clauses and Forms	Subchapter H
		Clauses for contracting in advance of funds.	32.705-1
	Patents:	Clauses for negotiated contracts (excluding construction).	27.203-4
	Contract	clauses for non-commercial purchases.	32.111
	Patents:	Clauses for sealed bid contracts (excluding construction).	27.203-2
	Tailoring of provisions and	clauses for the acquisition of commercial items.	12.302
		Clauses Incorporated by Reference.	52.252-2
	Patents:	Clauses on authorization and consent.	27.201-2
	Administration of patent rights	clauses.	27.305
	Materials Management Regulations System: Identification of provisions and	clauses.	52.103
	Authorized Deviations in	Clauses.	52.252-6
	Solicitation Provisions and Contract	Clauses.	Part 52
		Cleaning up.	36.512 52.236-12
		Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	52.247-52
	Contract finance office	clearance.	32.502-2
	Acquisition from Federal Prison Industries, Inc.:	Clearances.	8.605

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Closeout by the office administering the contract.	4.804-1
		Closeout of contract files.	4.804
		Closeout of paying office contract files.	4.804-3
		Closeout of the contracting office files if another office administers the contract.	4.804-2
	Procedures for	closing out contract files.	4.804-5
	Publication and	code arrangement.	1.105-1
	Definition:	Cognizant Federal agency	2.101
	Contract Administration and Audit Services:	Cognizant Federal agency.	42.003
	Definition:	Collateral costs	48.001 52.248-3
	Definition:	Collateral savings	48.001 52.248-1 52.248-3
	Value Engineering: Sharing	collateral savings.	48.104-3
	Other	collateral security.	32.304-6
	Deferment of	collection.	32.613
		Collective bargaining agreement (CBA)	22.1307 22.1405
	Response to late submission of Notice—no	collective bargaining agreement.	22.1012-4
	Response to late submission of Notice—with	collective bargaining agreement.	22.1012-5
	Response to timely submission of Notice—no	collective bargaining agreement.	22.1012-2
	Response to timely submission of Notice—with	collective bargaining agreement.	22.1012-3
	Section 4(c) successorship with incumbent contractor	collective bargaining agreement.	22.1008-3
	SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor	Collective Bargaining Agreements (CBA).	52.222-47
	Wage determinations based on	collective bargaining agreements.	22.1002-3
	Execution and	Commencement of Work.	52.216-23
	Opportunity for public	comments.	1.501-2
	Definition:	Commerce Business Daily (CBD)	2.101
	Electronic	Commerce in Contracting	4.5
	Definition:	Commercial advance payment	32.202-2
		Commercial Bill of Lading Notations.	52.247-1
	Contractor-prepaid	commercial bills of lading, small package shipments.	47.303-17
	Definition:	Commercial component	2.101 52.202-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Commercial Computer Software—Restricted Rights.	52.227-19
	Procedures for contracting officer-specified	commercial contract financing.	32.204
	Procedures for offeror-proposed	commercial contract financing.	32.205
	Administration and payment of	commercial financing payments.	32.207
	Definition:	Commercial interim payment	32.001
	Definition:	Commercial item	2.101 52.219-9
	Definition:	Commercial item offer	15.601
		Commercial Item Purchase Financing	32.2
	Types of payments for	commercial item purchases.	32.202-2
	Subcontracts for	Commercial Items and Commercial Components.	44.4
	Terms and Conditions—Simplified Acquisitions (Other Than	Commercial Items).	52.213-4
	Acquisition of Forms:	Commercial Items.	Part 12 53.212
	Contracts with	Commercial Organizations.	31.2
	Definition:	Commercial plan	19.701 52.219-9
	Other	commercial practices.	12.213
	Governmentwide	commercial purchase card.	13.301
	Determining availability of private	commercial sources.	7.303
	Submission of	Commercial Transportation Bills to the General Services Administration for Audit.	52.247-67
	Contracting Authority: Ratification of unauthorized	commitments.	1.602-3
	Definition:	Committee	8.701
	Transportation in Supply Contracts:	Commodity description and freight classification.	47.305-9
	Definition:	Common carrier	47.001
	Definition:	Common item	45.601
	Reporting, Redistribution, and Disposal of Contractor Inventory:	Common items.	45.606-2
	Definition:	Common parent	4.901 52.204-3
	Payment under	Communication Service Contracts with Common Carriers.	52.232-6
		Communications with the central nonprofit agencies and the Committee.	8.714
	Definition	Company	31.205-18
	Other Than Full and Open Competition: Unusual and	compelling urgency.	6.302-2
	Definition:	Compensated personal absence	31.001

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Compensation	3.104-1
	Overseas workers'	compensation and war hazard insurance.	28.305
	Workers'	Compensation and War-Hazard Insurance Overseas.	52.228-4
		Compensation for personal services.	31.205-6
	Evaluation of	Compensation for Professional Employees.	52.222-46
	Workers'	Compensation Insurance (Defense Base Act).	52.228-3
		Competition and Acquisition Planning	Subchapter B
		Competition in service contracting.	37.105
		Competition in Subcontracting.	52.244-5
		Competition Requirements	Part 6
	Promoting	competition.	13.104
	Instructions to Offerors—	Competitive Acquisition.	52.215-1
	Government Property:	Competitive Advantage	45.2
		Competitive contracts.	29.401-3
	Competition Requirements: Use of	competitive procedures.	6.102
	Competition Requirements: Sealed Bidding and	Competitive Proposals	6.4
	Employment of Workers with Disabilities:	Complaint procedures.	22.1406
	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans:	Complaint procedures.	22.1308
	Nondiscrimination Because of Age: Handling	complaints.	22.902
	Procedures for investigating	complaints.	3.905
	Whistleblower Protections for Contractor Employee: Procedures for filing	complaints.	3.904
	Equal Employment Opportunity:	Complaints.	22.808
	Physically	completed contracts.	4.804-4
	Termination for Default:	Completion by another contractor.	49.405
	Commencement, Prosecution, and	Completion of Work.	52.211-10
	Inventories upon termination or	completion.	45.508-1
	Use and Possession Prior to	Completion.	52.236-11
	Warranty of Supplies of a	Complex Nature.	52.246-18
	Labor Standards for Contracts Involving Construction:	Compliance checking.	22.406-7
	Definition:	Compliance evaluation	22.801
	Electric Service Territory	Compliance Representation.	52.241-1
		Compliance with Copeland Act Requirements.	52.222-10
		Compliance with Davis-Bacon and Related Act Regulations.	52.222-13

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Compliance with orders.	8.705-4
	Federal	Compliance with Right-to-Know Laws and Pollution Prevention Requirements	23.10
		Compliance with Veterans' Employment Reporting Requirements.	52.222-38
	Year 2000	compliance.	39.106
	Affirmative Action	Compliance.	52.222-25
	Definition:	Component	2.101 25.003 52.202-1 52.225-1 52.225-3 52.225-9 52.225-11
	Contract Debts:	Compromise actions.	32.616
		Computer Generated Forms.	52.253-1
		Computer generation.	53.105
	Definition:	Computer software	2.101 52.227-14 52.227-20
	Special Requirements for the Acquisition of Commercial Items:	Computer software.	12.212
	Representation of Limited Rights Data and Restricted	Computer Software.	52.227-15
	Commercial	Computer Software—Restricted Rights.	52.227-19
	Indirect Cost Rates:	Computing interest.	42.709-4
	Definition:	Concern	19.001
	Definition:	Conditional acceptance	46.101
	Site Investigation and	Conditions Affecting the Work.	52.236-3
	Change in Rates or Terms and	Conditions of Service for Regulated Services.	52.241-7
	Change in Rates or Terms and	Conditions of Service for Unregulated Services.	52.241-8
	Differing Site	Conditions.	52.236-2
	Familiarization with	Conditions.	52.247-5
	Fraud or other criminal	conduct.	49.106
	Standards of	conduct.	3.101
	Preconstruction	conference.	36.522 52.236-26
	Sealed Bidding: Pre-bid	conference.	14.207
	Postaward	conferences.	42.503

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Postaward subcontractor	conferences.	42.505
	Cost Accounting Standards Administration: Privileged and	confidential information.	30.202-4
	Improper Business Practices and Personal	Conflicts of Interest	Part 3
	Organizational and Consultant	Conflicts of Interest	9.5
	Quality Assurance: Certificate of	conformance.	46.504 52.246-15
	Requests from Members of	Congress.	5.403
	Multi-Year Contracting:	Congressional notification.	17.108
	Definition:	Connection charge	41.101
		Connection Charge.	52.241-9
	Consent to Subcontracts:	Consent and advance notification requirements.	44.201
		Consent limitations.	44.203
	Definition:	Consent of surety	28.001
		Consent of surety.	28.106-5
		Consent requirements.	44.201-1
	Definition:	Consent to subcontract	2.101 52.244-2
		Consent to Subcontracts	44.2
	Authorization and	consent.	27.201
		Consideration for contract financing.	32.005
	Acquisition	considerations.	7.401
	Subcontracting Policies and Procedures:	Considerations.	44.202-2
	F.o.b. Destination, within	Consignee's Premises.	52.247-35
		Consistency in Cost Accounting Practices.	52.230-4
	Disclosure and	Consistency of Cost Accounting Practices.	52.230-3
	Termination of Work	Consolidated Facilities or Facilities Acquisition.	52.249-11
	Government Property	Consolidated Facilities.	52.245-7
	Definition:	Construction	2.101
	Labor Standards for Contracts Involving	Construction	22.4
	Special Aspects of Contracting for	Construction	36.2
		Construction and architect-engineer contracts.	31.105
	Special	construction and printing.	53.106
	Disposition of disputes concerning	construction contract labor standards enforcement.	22.406-10
	Special procedures for price negotiation in	construction contracting.	36.214

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Special procedures for sealed bidding in	construction contracting.	36.213
	Clause for	construction contracts and for dismantling, demolition, and removal of improvements contracts.	27.203-5
		Construction contracts pay administration records.	4.705-2
		Construction contracts performed in North Carolina.	29.401-2
		Construction contracts with architect-engineer firms.	36.209
	Concurrent performance of firm-fixed-price and other types of	construction contracts.	36.208
	Performance and payment bonds and alternative payment protections for	construction contracts.	28.102
	Performance and payment bonds for other than	construction contracts.	28.103
	Pricing fixed-price	construction contracts.	36.207
	Progress payments under	construction contracts.	32.103
	Schedules for	construction contracts.	36.515
	Value Engineering: Clause for	construction contracts.	48.202
	Work oversight in cost-reimbursement	construction contracts.	36.518
		Construction contracts.	11.702
	Patent Indemnity—	Construction Contracts.	52.227-4
	Payments under Fixed-Price	Construction Contracts.	52.232-5
	Prompt Payment for	Construction Contracts.	52.232-27
	Schedules for	Construction Contracts.	52.236-15
	Work Oversight in Cost-Reimbursement	Construction Contracts.	52.236-18
	Government estimate of	construction costs.	36.203
	Definition:	Construction material	25.003 52.225-9 52.225-11
	Standard and optional forms for use in contracting for	construction or dismantling, demolition, or removal of improvements.	36.701
	Disclosure of the magnitude of	construction projects.	36.204
	Termination of Contracts: Cleanup of	construction site.	49.105-4
	Contracts for	construction work or architect-engineer services.	27.304-3
	Labor standards for	construction work performed under facilities contracts.	22.405
	Labor Standards for	Construction Work—Facilities Contracts.	52.222-17
	Default (Fixed-Price	Construction).	52.249-10
	Standard and Optional Forms for Contracting for	Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements	36.7
	Special procedure for cost-reimbursement contracts for	construction.	36.215

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Specifications and drawings for	construction.	36.521 52.236-21
	Affirmative Action Compliance Requirements for	Construction.	52.222-27
	Contract Award—Sealed Bidding—	Construction.	52.214-19
	Equal Employment Opportunity:	Construction.	22.804-2
	Fixed Fee—	Construction.	52.216-9
	Inspection of	Construction.	52.246-12
	Liquidated Damages—	Construction.	52.211-12
	Performance and Payment Bonds—	Construction.	52.228-15
	Preparation of Bids—	Construction.	52.214-18
	Preparation of Proposals—	Construction.	52.236-28
	Site Visit	Construction.	52.236-27
	Value Engineering—	Construction.	52.248-3
	Warranty of	Construction.	52.246-21
	Organizational and	Consultant Conflicts of Interest	9.5
	Subcontractors and Outside Associates and	Consultants (Architect-Engineer Services).	52.244-4
		Contents of contract files.	4.803
		Contents of written acquisition plans.	7.105
	Definition:	Continental United States	47.001
	Contracts with Commercial Organizations:	Contingencies.	31.205-7
	Definition:	Contingent fee	3.401
		Contingent Fees	3.4
	Covenant Against	Contingent Fees.	52.203-5
	Definition:	Continued portion of the contract	49.001
		Continuity of Services.	52.237-3
	Definition:	Contract	2.101
	Opening of Bids and Award of	Contract	14.4
	Definition:	Contract action	5.001 32.001
	Synopses of Proposed	Contract Actions	5.2
	Publicizing	contract actions.	Part 5 53.205
		Contract adjustment boards.	50.202
	Types of	contract adjustment.	50.302
		Contract adjustment.	50.303

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contract administration functions.	42.302
	Definition:	Contract administration office	2.101
		Contract administration office responsibilities.	46.104
	Evaluation of	contract administration offices.	42.403
		Contract administration responsibilities.	42.201
		Contract Administration Services	42.2
		Contract administration services directory.	42.203
	Assignment of	contract administration.	42.202
	Prescription of Forms:	Contract administration.	53.242
		Contract audit responsibilities.	42.101
		Contract Audit Services	42.1
		Contract audit services directory.	42.103
	Assignment of	contract audit services.	42.102
	Evaluation of Options Exercised at Time of	Contract Award.	52.217-4
	Announcement of	contract awards.	5.303
	Sealed Bidding:	Contract Award—Sealed Bidding.	52.214-10
	Sealed Bidding:	Contract Award—Sealed Bidding—Construction.	52.214-19
	Definition:	Contract carrier	47.001
	Notification of	contract changes.	43.104
		Contract clause for definitions.	2.201
		Contract clause for fast payment procedure.	13.404
		Contract clause for insurance of leased motor vehicles.	28.312
		Contract clause for work on a Government installation.	28.310
	Definition:	Contract clause or clause	2.101
	Solicitation Provisions and	Contract Clauses	Part 52
		Contract clauses for insurance of transportation or transportation-related services.	28.313
		Contract clauses for non-commercial purchases.	32.111
	Solicitation provisions and	contract clauses for the acquisition of commercial items.	12.301
		Contract clauses for workers' compensation insurance.	28.309
	Contract Administration and Audit Services:	Contract correspondence.	42.401
		Contract Cost Principles and Procedures	Part 31
	Definition:	Contract date	52.229-4 52.229-6 52.229-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contract Debts	32.6
		Contract Definitization.	52.216-25
		Contract Distribution	4.2
		Contract Execution	4.1
	Government	Contract Files	4.8
	Closeout of	contract files.	4.804
	Closeout of paying office	contract files.	4.804-3
	Contents of	contract files.	4.803
	Procedures for closing out	contract files.	4.804-5
	Storage, handling, and disposal of	contract files.	4.805
		Contract files.	4.802
		Contract financing (SF 1443).	53.232
	Description of	contract financing methods.	32.102
	Need for	contract financing not a deterrent.	32.107
	Definition:	Contract financing payment	32.001
		Contract financing payments	32.007
	Determining	contract financing terms.	32.203
	Consideration for	contract financing.	32.005
	Customary	contract financing.	32.113
	Procedures for offeror-proposed commercial	contract financing.	32.205
	Providing	contract financing.	32.104
	Unusual	contract financing.	32.114
	Uses of	contract financing.	32.105
		Contract financing.	12.210
	Capability to Perform a	Contract for the Relocation of a Federal Office.	52.247-3
	Sealed Bidding: Simplified	contract format.	14.201-9
	Acquisition of Commercial Items:	Contract format.	12.303
	Contracting by Negotiation:	Contract format.	15.204
	Contracting by Negotiation: Order of Precedence—Uniform	Contract Format.	52.215-8
		Contract funding requirements.	32.703
	Reporting	contract information to the IRS.	4.903
	Disposition of disputes concerning construction	contract labor standards enforcement.	22.406-10
		Contract Line Items	4.10
		Contract Management	Subchapter G
	Definition:	Contract modification	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contract Modifications	Part 43
		Contract modifications (options, extensions, changes in scope) and anniversary dates.	22.1008-6
		Contract Modifications (SF 30).	53.243
		Contract negotiation.	19.808
		Contract Not Affected by Oral Agreement.	52.247-27
	Reduction or suspension of	contract payments upon finding of fraud.	32.006
	Withholding from or suspension of	contract payments.	22.406-9
	Withholding of	contract payments.	22.1022
		Contract performance in foreign countries.	32.004
	Definition:	Contract price	52.228-15 52.228-16
	Contracting by Negotiation:	Contract Pricing	15.4
	Basic Labor Policies:	Contract pricing and administration.	22.101-2
		Contract Purpose (Nonprofit Educational Institutions).	52.245-12
	SCA Minimum Wages and Fringe Benefits Applicable to Successor	Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	52.222-47
	Single-agency assignments of Government	contract quality assurance.	46.408
	Acquisition of Commercial Items:	Contract quality assurance.	12.208
	Higher-level	contract quality requirement.	46.202-4 46.311 52.246-11
	Definition:	Contract quality requirements	46.101
		Contract Quality Requirements	46.2
	Criteria for use of	contract quality requirements.	46.203
		Contract Reporting.	4.6 53.204-2
	Extraordinary Contractual Actions:	Contract requirements.	50.307
	Leasing Motor Vehicles:	Contract requirements.	8.1103
		Contract surety bonds and loan guarantees.	32.304-7
		Contract Termination Clauses	49.5
		Contract Termination Forms and Formats	49.6
		Contract Termination—Debarment.	52.222-12
		Contract terminations.	22.406-11
		Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.	52.212-5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contract Terms and Conditions—Commercial Items.	52.212-4
	Contracting methods and	contract type.	35.006
	Types of Contracts: Negotiating	contract type.	16.103
	Acquisition of Commercial Items:	Contract type.	12.207
	Service Contracting:	Contract type.	37.602-4
	Selecting	Contract Types	16.1
		Contract Work Hours and Safety Standards Act.	22.3 22.403-3
		Contract Work Hours and Safety Standards Act—Overtime Compensation.	52.222-4
	Suspension of payments, termination of	contract, and debarment and suspension actions.	23.506
	Awarding the	contract.	19.602-4
	Closeout by the office administering the	contract.	4.804-1
	Closeout of the contracting office files if another office administers the	contract.	4.804-2
	Alterations in	Contract.	52.252-4
	Approval of	Contract.	52.204-1
	Scope and Duration of	Contract.	52.241-3
	Type of	Contract.	52.216-1
	Definition:	Contracting	2.101
	Electronic Commerce in	Contracting	4.5
	Federal Supply Schedule	Contracting	Part 38
	Research and Development	Contracting	Part 35
	Service	Contracting	Part 37
	Research and development	contracting (SF 298).	53.235
	Definition:	Contracting action	5.001
	Definition:	Contracting activity	2.101
		Contracting authority and responsibilities (SF 1402).	53.201-1
	Materials Management Acquisition Regulations System: Career Development,	Contracting Authority, and Responsibilities	1.6
		Contracting by negotiation agency procedures.	15.606
	Construction and Architect-Engineer Contracts:	Contracting by negotiation.	36.520 53.215
	Special Aspects of	Contracting for Construction	36.2
	Standard and Optional Forms for	Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements	36.7
		Contracting for Environmentally Preferable Products and Services	23.7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Clauses for	contracting in advance of funds.	32.705-1
	Special	Contracting Methods	Part 17
		Contracting methods and contract type.	35.006
		Contracting Methods and Contract Types	Subchapter C
	Definition:	Contracting office	2.101 48.001 52.248-1
	Closeout of the	contracting office files if another office administers the contract.	4.804-2
		Contracting office responsibilities.	46.103
	Definition:	Contracting officer	2.101 52.202-1 52.243-7
	Corporate Administrative	Contracting Officer	42.6
		Contracting officer action.	32.409
	Indirect Cost Rates:	Contracting officer determination procedure.	42.705-1
	Acquisition Planning:	Contracting officer responsibilities.	7.204
	Improper Business Practices and Personal Conflicts of Interest:	Contracting officer responsibilities.	3.603
	Organizational and Consultant Conflicts of Interest:	Contracting officer responsibilities.	9.504
	Service Contracting:	Contracting officer responsibilities.	37.103 37.205 37.402
	Transportation:	Contracting officer responsibilities.	47.301-1
	Responsibilities of the	contracting officer under the subcontracting assistance program.	19.705
	Memorandum by the	contracting officer.	49.402-5
	Postaward responsibilities of the	contracting officer.	19.705-6
		Contracting officer's authority.	33.210
		Contracting officer's decision.	33.211
		Contracting officer's duties upon appeal.	33.212
		Contracting officer's evaluation.	44.202
		Contracting officer's signature.	4.101
	Materials Management Acquisition Regulations System:	Contracting officers.	1.602
	Procedures for	contracting officer-specified commercial contract financing.	32.204
	Architect-Engineer Services: Applicable	contracting procedures.	36.601-3
		Contracting with individual pool members.	9.703
		Contracting with pools.	9.702
	Construction and Architect-Engineer Contracts: Methods of	contracting.	36.103

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Modular	contracting.	39.103
	Special procedures for price negotiation in construction	contracting.	36.214
	Special procedures for sealed bidding in construction	contracting.	36.213
	Definition:	Contractor	22.1001 44.101 9.403 52.222-41
	Simplified Acquisition Methods: Obtaining	contractor acceptance and modifying purchase orders.	13.302-3
	Definition:	Contractor bid or proposal information	3.104-1
	Disclosure, protection, and marking of	contractor bid or proposal information and source selection information.	3.104-4
	Contract Adjustments:	Contractor certification.	50.303-2
	Protests, Disputes, and Appeals:	Contractor certification.	33.207
	Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical, and/or Office and Business Equipment—	Contractor Certification.	52.222-48
	SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor	Contractor Collective Bargaining Agreements (CBA).	52.222-47
	Whistleblower Protections for	Contractor Employees	3.9
		Contractor Gratuities to Government Personnel	3.2
		Contractor inspection requirements.	46.301 52.246-1
	Definition:	Contractor inventory	45.601
	Reporting, Redistribution, and Disposal of Contractor Inventory:	Contractor inventory in foreign countries.	45.610-4
	Accounting for	contractor inventory.	45.615
	Restrictions on purchase or retention of	contractor inventory.	45.604
	Screening of	contractor inventory.	45.608
		Contractor Liability for Loss of and/or Damage to Freight other than Household Goods.	52.247-22
		Contractor Liability for Loss of and/or Damage to Household Goods.	52.247-23
		Contractor Liability for Loss of or Damage to Property of the Government	46.8
		Contractor Liability for Personal Injury and/or Property Damage.	52.247-21
		Contractor Performance Information	42.15
	Evaluation of	contractor performance.	36.201
	Definition:	Contractor purchasing system review (CPSR)	44.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contractor Qualifications	Part 9
	Forms:	Contractor qualifications.	53.209
		Contractor Records Retention	4.7
		Contractor requests.	50.303-1
		Contractor responsibilities.	46.105 47.207-5
		Contractor Responsibility for Loading and Unloading.	52.247-15
		Contractor Responsibility for Receipt of Shipment.	52.247-14
		Contractor Responsibility for Returning Undelivered Freight.	52.247-16
		Contractor responsibility.	45.502
	Definition:	Contractor team arrangement	9.601
	Contractor Qualifications:	Contractor Team Arrangements	9.6
	First Article Approval—	Contractor Testing.	52.209-3
	Incremental Payment by	Contractor to Government.	52.237-6
	Payment by	Contractor to Government.	52.237-5
		Contractor Use and Rental of Government Property	45.4
		Contractor Use of Government Supply Sources	51.1
		Contractor use of Government supply sources (OF 347).	53.251
		Contractor use of Government-owned and -operated test facilities.	45.302-4
		Contractor Use of Interagency Fleet Management System (IFMS) Vehicles	51.2
		Contractor Use of Mandatory Sources of Supply or Services.	52.208-9
		Contractor Versus Government Performance	7.3
	Completion by another	contractor.	49.405
	Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a	contractor.	3.104-6
	Follow-up by	contractor.	27.305-2
	Government reliance on inspection by	contractor.	46.202-2
	Patent indemnification of Government by	contractor.	27.203
	Performance of work by the	contractor.	36.501 52.236-1
	Superintendence by the	contractor.	36.506 52.236-6
	Payment by Government to	Contractor.	52.237-4
	Responsibility of the Architect-Engineer	Contractor.	52.236-23
	Definition:	Contractor-acquired property	45.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contractor-acquired property.	45.605
		Contractor-prepaid commercial bills of lading, small package shipments.	47.303-17
	Responsible Prospective	Contractors	9.1
	Use of Government Sources by	Contractors	Part 51
	Agreement to recognize	contractor's change of name.	42.1205
		Contractor's commercial items.	31.106-3
	Protecting the Government's Interest when Subcontracting with	Contractors Debarred, Suspended, or Proposed for Debarment.	52.209-6
	Definition:	Contractor's development and implementation costs	48.001 52.248-1 52.248-3
		Contractor's Facilities.	52.241-5
	F.o.b. origin,	contractor's facility.	47.303-2 52.247-30
		Contractor's Invoices.	52.247-28
		Contractor's liability.	45.504
		Contractor's maintenance program.	45.509-1
	Definition:	Contractor's managerial personnel	52.245-5 52.245-8 52.246-3 52.246-6 52.246-8 52.246-10
	Definition:	Contractor's principal officials	52.250-1
	Review and correction of	contractors' property control systems.	45.104
		Contractors' Purchasing Systems Reviews	44.3
		Contractor's signature.	4.102
	Furnishing assistance to	contractors.	51.104
	Loading responsibilities of	contractors.	47.305-15
	Responsible Prospective	Contractors.	9.1 53.209-1
	Incentive	Contracts	16.4
	Indefinite-Delivery	Contracts	16.5
	Management Oversight of Service	Contracts	37.5
	Voiding and Rescinding	Contracts	3.7
	Clauses for negotiated	contracts (excluding construction).	27.203-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Clauses for sealed bid	contracts (excluding construction).	27.203-2
	Negotiated	contracts (excluding construction).	27.203-3
	Research and development	contracts (short form).	46.309
	Previous	Contracts and Compliance Reports.	52.222-22
	Clause for construction	contracts and for dismantling, demolition, and removal of improvements contracts.	27.203-5
	Payments under Transportation	Contracts and Transportation-Related Services Contracts.	52.232-4
	Award of classified	contracts by sealed bidding.	14.409-2
	Award of unclassified	contracts by sealed bidding.	14.409-1
		Contracts conditioned upon availability of funds.	32.703-2
	Service Contract Act of 1965, As Amended: Some examples of	contracts covered.	22.1003-5
		Contracts crossing fiscal years.	32.703-3
		Contracts for commercial items.	46.202-1
		Contracts for construction work or architect-engineer services.	27.304-3
	Special procedure for cost-reimbursement	contracts for construction.	36.215
		Contracts for dismantling, demolition, or removal of improvements.	46.313
	Indefinite-delivery	contracts for leased equipment.	29.401-1
	Exemption from Application of Service Contract Act Provisions for	Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.	52.222-48
	Nonpayment of subcontractors under	contracts for noncommercial items.	32.112
	Selecting	contracts for postaward orientation.	42.502
		Contracts for research with educational institutions and nonprofit organizations.	35.015
		Contracts for Transportation or for Transportation-Related Services	47.2
	Short selection process for	contracts not to exceed the simplified acquisition threshold.	36.602-5
	Construction	contracts performed in North Carolina.	29.401-2
		Contracts performed in U.S. possessions or Puerto Rico.	29.401-5
	Taxes—	Contracts Performed in U.S. Possessions or Puerto Rico.	52.229-5
		Contracts placed by or for other Government agencies.	27.304-2
		Contracts with commercial organizations.	31.103 31.2
	Payment under Communication Service	Contracts with Common Carriers.	52.232-6
	Fixed-price	contracts with economic price adjustment.	16.203
		Contracts with educational institutions.	31.104 31.3

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Contracts with foreign governments or international organizations.	45.405
	Taxes—Cost-Reimbursement	Contracts with Foreign Governments.	52.229-9
	Taxes—Fixed-Price	Contracts with Foreign Governments.	52.229-7
		Contracts with Government Employees or Organizations Owned or Controlled by Them	3.6
		Contracts with nonprofit organizations.	31.108 31.7
	Fixed-price	contracts with prospective price redetermination.	16.205
	Fixed-ceiling-price	contracts with retroactive price redetermination.	16.206
		Contracts with State, local, and federally recognized Indian tribal governments.	31.107 31.6
	Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option	Contracts).	52.222-43
	Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour	Contracts).	52.245-5
	Government Property (Fixed-Price	Contracts).	52.245-2
	Liability for Government Property (Demolition Services	Contracts).	52.245-6
	Applying Pub. L. 85-804 to advance payments under sealed bid	contracts.	32.405
	Assignment of claims under	contracts.	32.304-5
	Competitive	contracts.	29.401-3
	Concept exploration	contracts.	34.005-3
	Construction	contracts.	11.702 46.312 49.305-2
	Construction and architect-engineer	contracts.	31.105 53.236 31.201-7 Part 36
	Continuation of current	contracts.	9.405-1
	Cost	contracts.	16.302
	Cost-plus-award-fee	contracts.	16.305 16.405-2
	Cost-plus-fixed-fee	contracts.	16.306
	Cost-plus-incentive-fee	contracts.	16.304 16.405-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Cost-reimbursement	contracts.	16.3 45.605-3 47.104-3
	Cost-reimbursement incentive	contracts.	16.405
	Cost-sharing	contracts.	16.303
	Definite-quantity	contracts.	16.502
	Demonstration	contracts.	34.005-4
	Domestic	contracts.	29.401
	Facilities	contracts.	31.106 46.310 45.302-2
	Firm-fixed-price	contracts.	16.202
	Firm-fixed-price, level-of-effort term	contracts.	16.207
	Fixed-price incentive	contracts.	16.204 16.403
	Fixed-price incentive (firm target)	contracts.	16.403-1
	Fixed-price incentive (successive targets)	contracts.	16.403-2
	Fixed-price research and development	contracts.	46.307
	Foreign	contracts.	29.402
	Foreign fixed-price	contracts.	29.402-1
	Full-scale development	contracts.	34.005-5
	Funding and term of service	contracts.	37.106
	GSA areawide	contracts.	41.204
	Identifying management and operating	contracts.	17.604
	Indefinite-quantity	contracts.	16.504
	Insurance under cost-reimbursement	contracts.	28.307
	Insurance under fixed-price	contracts.	28.306
	Labor standards for construction work performed under facilities	contracts.	22.405
	Labor-hour	contracts.	16.602
	Letter	contracts.	16.603
	Loan guarantees for terminated	contracts.	32.305
	Losses on other	contracts.	31.205-23
	Noncompetitive	contracts.	29.401-4
	Optional property-related clauses for facilities	contracts.	45.302-7
	Personal services	contracts.	37.104
	Physically completed	contracts.	4.804-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Preparing the	contracts.	19.811
	Progress payments under construction	contracts.	32.103
	Quality Assurance: Cost-reimbursement research and development	contracts.	46.308
	Quality Assurance: Cost-reimbursement service	contracts.	46.305
	Quality Assurance: Cost-reimbursement supply	contracts.	46.303
	Quality Assurance: Fixed-price service	contracts.	46.304
	Quality Assurance: Fixed-price supply	contracts.	46.302
	Quality Assurance: Time-and-material and labor-hour	contracts.	46.306
	Quality Assurance: Transportation	contracts.	46.314
	Required Government property clauses for facilities	contracts.	45.302-6
	Requirements	contracts.	16.503
	Service Contract Act of 1965, As Amended: Multiple-year	contracts.	22.1008-5
	Settlement of terminated incentive	contracts.	49.115
	Single-movement	contracts.	47.204
	Solicitation provision and contract clause on liability insurance under cost-reimbursement	contracts.	28.311
	Structuring multiple-incentive	contracts.	16.402-4
	Supply	contracts.	11.701
	Termination of	contracts.	Part 49 53.249
	Time-and-materials	contracts.	16.601
	Transportation term	contracts.	47.203
	Types of	contracts.	14.104 Part 16 53.216
	Work oversight in architect-engineer	contracts.	36.609-3 52.236-24
	Accessorial Services—Moving	Contracts.	52.247-13
	Cancellation Under Multi-year	Contracts.	52.217-2
	Fixed-Price	Contracts.	16.2 31.102 47.104-2
	Payments under Fixed-Price Architect-Engineer	Contracts.	52.232-10
	Payments under Fixed-Price Construction	Contracts.	52.232-5
	Payments under Fixed-Price Research and Development	Contracts.	52.232-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Payments under Personal Services	Contracts.	52.232-3
	Payments under Time-and-Materials and Labor-Hour	Contracts.	52.232-7
	Prompt Payment for Construction	Contracts.	52.232-27
	Prompt Payment for Fixed-Price Architect-Engineer	Contracts.	52.232-26
	Schedules for Construction	Contracts.	52.236-15
	Taxes—Foreign Cost-Reimbursement	Contracts.	52.229-8
	Taxes—Foreign Fixed-Price	Contracts.	52.229-6
	Work Oversight in Cost-Reimbursement Construction	Contracts.	52.236-18
	Foreign cost-reimbursement	contracts.	29.402-2
	Separate	contracts.	41.205
	Extraordinary	Contractual Actions	Part 50
	Definition:	Contribution	15.601
		Contributions or donations.	31.205-8
	Agency	control and compliance procedures.	1.304
	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements	Control List, DoD 5010.12-L.	52.211-2
	Definition:	Controlled materials	11.601
	Definition:	Controlled substance	23.503 52.223-6
	Definition:	CONUS	47.001
	Shipments from	CONUS for overseas delivery.	47.304-3
	Shipments originating outside	CONUS.	47.304-4
	Shipments within	CONUS.	47.304-2
	Termination for	Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	52.249-3
	Termination for	Convenience of the Government (Educational and Other Nonprofit Institutions).	52.249-5
	Termination for	Convenience of the Government (Fixed-Price) (Short Form).	52.249-1
	Termination for	Convenience of the Government (Fixed-Price).	52.249-2
	Termination for	Convenience of the Government (Services) (Short Form).	52.249-4
	Federal Supply Schedules: Termination for	convenience.	8.405-6
	MMAR	conventions.	1.108
		Convict Labor.	22.2 52.222-3

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Conviction	2.101 23.503 52.223-6
		Coordination requirements.	38.201
	Compliance with	Copeland Act Requirements.	52.222-10
		Copeland Act.	22.403-2
	Printed or	Copied Double-Sided on Recycled Paper.	52.204-4
	Notice and Assistance Regarding Patent and	Copyright Infringement.	52.227-2
	Patents, Data, and	Copyrights	Part 27
		Corporate Administrative Contracting Officer	42.6
		Correcting mistakes.	50.302-2
	Definition:	Correction	52.246-17 52.246-18 52.246-19
	Contract Administration and Audit Services:	Correspondence and Visits.	42.4
	Contract	correspondence.	42.401
	Limitation of	Cost (Facilities).	52.232-21
	Changes to disclosed or established	cost accounting practices.	30.602
	Consistency in	Cost Accounting Practices.	52.230-4
	Disclosure and Consistency of	Cost Accounting Practices.	52.230-3
	Financial and	cost accounting records.	4.705-1
		Cost Accounting Standards Administration	Part 30
		Cost Accounting Standards Board Publication.	30.102
		Cost Accounting Standards Notices and Certification.	52.230-1
		Cost Accounting Standards Preambles and Regulations	Appendix
	Acquisition of Commercial Items:	Cost Accounting Standards.	12.214
	Administration of	Cost Accounting Standards.	52.230-6
	Text of Provisions and Clauses:	Cost Accounting Standards.	52.230-2
		Cost Accounting Standards—Educational Institution.	52.230-5
	Severance Pay to Foreign Nationals: Waiver of	cost allowability limitations.	37.113-1
	Allowable	Cost and Payment.	52.216-7
	Allowable	Cost and Payment—Facilities Use.	52.216-14
	Allowable	Cost and Payment—Facilities.	52.216-13
	Notice of	Cost Comparison (Sealed-Bid).	52.207-1
		Cost Contract—No Fee.	52.216-11

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Cost contracts.	16.302
	Transportation	cost determinations.	47.306-1
	Government	cost estimate for architect-engineer work.	36.605
		Cost incentives.	16.402-1
	Definition:	Cost input	31.001
	Definition:	Cost objective	31.001
	Definition:	Cost of capital committed to facilities	31.001
	Definition:	Cost of components	25.003 52.225-1 52.225-3 52.225-9 52.225-11
		Cost of money.	31.205-10
	Facilities Capital	Cost of Money.	52.215-16
	Waiver of Facilities Capital	Cost of Money.	52.215-17
	Clauses for limitation of	cost or funds.	32.705-2
	Limitation of	cost or funds.	32.704
	Special	cost or pricing areas.	15.407
	Definition:	Cost or pricing data	2.101
	Prohibition on obtaining	cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).	15.403-1
	Requiring	cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).	15.403-4
	Other circumstances where	cost or pricing data are not required.	15.403-2
	Instructions for submission of	cost or pricing data or information other than cost or pricing data.	15.403-5
	Requirements for	Cost or Pricing Data or Information Other Than Cost or Pricing Data.	52.215-20
	Defective	cost or pricing data.	15.407-1
	Obtaining	cost or pricing data.	15.403
	Requiring information other than	cost or pricing data.	15.403-3
	Certificate of Current	Cost or Pricing Data.	15.406-2
	Subcontractor	Cost or Pricing Data.	52.215-12
	Table 15-2—Instructions for Submitting	Cost or Pricing Data.	15.408
	Price Reduction for Defective	Cost or Pricing Data—Modifications.	52.215-11
	Subcontractor	Cost or Pricing Data—Modifications.	52.215-13
	Price Reduction for Defective	Cost or Pricing Data—Modifications—Sealed Bidding.	52.214-27
	Subcontractor	Cost or Pricing Data—Modifications—Sealed Bidding.	52.214-28
	Contract	Cost Principles and Procedures	Part 31

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Applicable	cost principles.	31.106-1
		Cost principles.	49.113
	Predetermined Indirect	Cost Rates.	52.216-15
	Definition:	Cost realism	2.101
	Inspection of Research and Development—	Cost Reimbursement.	52.246-8
	Should-	cost review.	15.407-4
	Definition:	Cost sharing	2.101
	Composition of total	cost.	31.201-1
	Determining reasonableness of	cost.	25.105
	Limitation of	Cost.	52.232-20
		Cost-plus-award-fee contracts.	16.305 16.405-2
		Cost-plus-fixed-fee contracts.	16.306
		Cost-plus-incentive-fee contracts.	16.304 16.405-1
	Work oversight in	cost-reimbursement construction contracts.	36.518 52.236-18
	Special procedure for	cost-reimbursement contracts for construction.	36.215
	Additional Principles for	Cost-Reimbursement Contracts Terminated for Convenience	49.3
	Taxes—	Cost-Reimbursement Contracts with Foreign Governments.	52.229-9
	Insurance under	cost-reimbursement contracts.	28.307
	Special tooling under	cost-reimbursement contracts.	45.306-2
		Cost-Reimbursement Contracts.	16.3 45.605-3 47.104-3
	Taxes—Foreign	Cost-Reimbursement Contracts.	52.229-8
	Foreign	cost-reimbursement contracts.	29.402-2
		Cost-reimbursement contracts—complete termination, if settlement includes cost.	49.603-3
		Cost-reimbursement contracts—complete termination, with settlement limited to fee.	49.603-4
		Cost-reimbursement contracts—partial termination.	49.603-5
		Cost-reimbursement incentive contracts.	16.405
	Payment of subcontractors under	cost-reimbursement prime contracts.	32.110
		Cost-reimbursement research and development contracts.	46.308

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Cost-reimbursement service contracts.	46.305
		Cost-reimbursement supply contracts.	46.303
	Government Property	Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts.	52.245-5
	Changes—	Cost-Reimbursement.	52.243-2
	Inspection of Services—	Cost-Reimbursement.	52.246-5
	Inspection of Supplies—	Cost-Reimbursement.	52.246-3
	Termination	Cost-Reimbursement.	52.249-6
	Definition:	Costs	31.205-47(a) 52.216-5 52.216-6 52.216-16 52.216-17
	Disallowance of	Costs	42.8
	Disallowing	costs after incurrence.	42.803
	Employee morale, health, welfare, food service, and dormitory	costs and credits.	31.205-13
	Other	costs and savings.	45.202-3
	Royalties and other	costs for use of patents.	31.205-37
		Costs of alcoholic beverages.	31.205-51
	Definition:	Costs of idle facilities or idle capacity	31.205-17
		Costs related to legal and other proceedings.	31.205-47
	Liability for Government	costs resulting from design errors or deficiencies.	36.608
	Bonding	costs.	31.205-4
	Certificate of indirect	costs.	42.703-2
	Deferred research and development	costs.	31.205-48
	Direct	costs.	31.202
	Economic planning	costs.	31.205-12
	Entertainment	costs.	31.205-14
	Idle facilities and idle capacity	costs.	31.205-17
	Independent research and development and bid and proposal	costs.	31.205-18
	Indirect	costs.	31.203
	Interest and other financial	costs.	31.205-20
	Labor relations	costs.	31.205-21
	Lobbying and political activity	costs.	31.205-22
	Lowest overall transportation	costs.	47.306-2
	Maintenance and repair	costs.	31.205-24

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Manufacturing and production engineering	costs.	31.205-25
	Material	costs.	31.205-26
	Notice of intent to disallow	costs.	42.801
	Organization	costs.	31.205-27
	Patent	costs.	31.205-30
	Plant protection	costs.	31.205-29
	Plant reconversion	costs.	31.205-31
	Precontract	costs.	31.205-32
	Professional and consultant service	costs.	31.205-33
	Public relations and advertising	costs.	31.205-1
	Recruitment	costs.	31.205-34
	Relocation	costs.	31.205-35
	Rental	costs.	31.205-36
	Selected	costs.	31.205
	Selling	costs.	31.205-38
	Service and warranty	costs.	31.205-39
	Special tooling and special test equipment	costs.	31.205-40
	Termination	costs.	31.205-42
	Trade, business, technical, and professional activity	costs.	31.205-43
	Training and education	costs.	31.205-44
	Transportation	costs.	31.205-45
	Travel	costs.	31.205-46
	Certification of Final Indirect	Costs.	52.242-4
	No Evaluation of Transportation	Costs.	52.247-50
	Notice of Intent to Disallow	Costs.	52.242-1
	Penalties for Unallowable	Costs.	52.242-3
	Fines, penalties, and mischarging	costs.	31.205-15
		Cost-Sharing Contract—No Fee.	52.216-12
		Cost-sharing contracts.	16.303
		Cost-sharing rates and limitations on indirect cost rates.	42.707
	Definition:	Country concerned	52.229-6
	F.o.b. Inland Point,	Country of Importation.	52.247-39
		Covenant Against Contingent Fees.	52.203-5
	Security, supervision, and	covenants.	32.409-3
	Definition:	Covered area	52.222-27

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Covered Federal action	3.801 52.203-12
	Definition:	Covered personnel	37.201
		Credits.	31.201-5
	Capital	Credits.	52.241-13
	Transportation Transit Privilege	Credits.	52.247-57
		Criminal and civil penalties, and further administrative remedies.	3.104-8
	Definition:	Criminal drug statute	23.503 52.223-6
	Contracting by Negotiation:	Criteria for acceptance and negotiation of an unsolicited proposal.	15.607
		Criteria for use of contract quality requirements.	46.203
		Criteria for use of warranties.	46.703
	Definition:	Critical nonconformance	46.101
	Assignment of	criticality designator.	42.1105
	Certified or cashier's checks, bank drafts, money orders, or Debarment, Suspension, and Ineligibility: Continuation of	currency.	28.204-2
		current contracts.	9.405-1
		Current editions.	53.102
	Definition:	Custodial records	45.501
	Definition:	Customary contract financing	32.001
	Describing Agency Needs:	Customer satisfaction.	11.203
		Customs and Duties	25.9
	Definition:	Customs territory of the United States	25.003 52.225-8
	Definition:	Cylinder	52.247-66
	Returnable	Cylinders.	52.247-66
	Contractor Liability for Loss of and/or Insurance against loss of or	Damage to Freight other than Household Goods.	52.247-22
	Contractor Liability for Loss of and/or	damage to Government property.	28.303
	Contractor Liability for Loss of or	Damage to Household Goods.	52.247-23
	Contractor Liability for Loss of or	Damage to Property of the Government	46.8
	Definition:	Data	27.401 52.227-14 52.227-17 52.227-20
	Basic rights in	data clause.	27.404
		Data collection and reporting requirements.	19.202-5
	Rights to technical	data in successful proposals.	27.407

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Collecting	data on and appraising firms' qualifications.	36.603
	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and	Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Other	data rights provisions.	27.405
		Data rights—General.	27.403
		Data Universal Numbering System (DUNS) Number.	52.204-6
	Patents,	Data, and Copyrights	Part 27
	Acquisition of	data.	27.406
	Contracting by Negotiation: Limited use of	data.	15.609
	Inspection of site and examination of	data.	36.210
	Physical	data.	36.504
	Research and Development Contracting:	Data.	35.011
		Davis-Bacon Act wage determinations.	22.404
		Davis-Bacon Act.	22.403-1 52.222-6
		Davis-Bacon Act—Price Adjustment (Actual Method).	52.222-32
		Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).	52.222-30
		Davis-Bacon Act—Price Adjustment (Percentage Method).	52.222-31
	Compliance with	Davis-Bacon and Related Act Regulations.	52.222-13
	Definition:	Day	2.101 33.101
	Safeguarding classified information within industry	DD Form-254, DD Form-441.	53.204-1
	Definition:	Debarment	2.101
	Suspension of payments, termination of contract, and	debarment and suspension actions.	23.506
		Debarment, Suspension, and Ineligibility	9.4
	Certification regarding	debarment, suspension, proposed debarment, and other responsibility matters.	9.408 52.209-5
	Causes for	debarment.	9.406-2
	Period of	debarment.	9.406-4
	Scope of	debarment.	9.406-5
		Debarment.	9.406
	Contract Termination—	Debarment.	52.222-12
	Protecting the Government's Interest when Subcontracting with Contractors	Debarred, Suspended, or Proposed for Debarment.	52.209-6
	Definition:	Debarring official	9.403

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contracting by Negotiation: Postaward	debriefing of offerors.	15.506
	Contracting by Negotiation: Preaward	debriefing of offerors.	15.505
		Debt determination and collection.	32.606
	Demand for payment of contract	debt.	32.610
	Bad	debts.	31.205-3
	Negotiation of contract	debts.	32.608
	Definition:	Decision to award a subcontract or modification of subcontract	3.104-1
	Disputes and Appeals: Contracting officer's	decision.	33.211
	Technical Data	Declaration, Revision, and Withholding of Payment—Major Systems.	52.227-21
		Deductions.	49.204
		Default (Fixed-Price Construction).	52.249-10
		Default (Fixed-Price Research and Development).	52.249-9
		Default (Fixed-Price Supply and Service).	52.249-8
	Procedure for	default.	49.402-3
	Termination for	default.	8.405-5 22.1023
	Termination of fixed-price contracts for	default.	49.504
	Definition:	Defect	52.246-19
	Definition:	Defective certification	33.201
		Defective cost or pricing data.	15.407-1
	Price Reduction for	Defective Cost or Pricing Data—Modifications.	52.215-11
	Price Reduction for	Defective Cost or Pricing Data—Modifications—Sealed Bidding.	52.214-27
	Workers' Compensation Insurance	Defense Base Act.	52.228-3
		Defense Priority and Allocation Requirements.	52.211-15
	Loan Guarantees for	Defense Production	32.3
	Testing, Qualification, and Use of Industrial Resources Developed Under Title III,	Defense Production Act	34.1
	Industrial Resources Developed Under	Defense Production Act Title III.	52.234-1
		Defense Production Pools and Research and Development Pools	9.7
	Using the	Defense Transportation System (DTS).	47.301-3
	Definition:	Deferred compensation	31.001
	Liability for Government costs resulting from design errors or	deficiencies.	36.608
	Redesign responsibility for design errors or	deficiencies.	36.609-2
	Definition:	Deficiency	15.001

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Defined-benefit pension plan	31.001
	Definition:	Defined-contribution pension plan	31.001
		Definite Quantity.	52.216-20
		Definite-quantity contracts.	16.502
		Definitions Clause	2.2
		Definitions of Words and Terms	Part 2
	Government	delay of work.	42.1304 52.242-17
		Delays in receipt of notices or demands.	32.615
	Excusable	Delays.	52.249-14
	Definition:	Delegate Agency	11.601
	Definition:	Delegated agency	41.101
	Statutory and	delegated authority.	41.103
		Delegation of and Limitations on Exercise of Authority	50.2
		Delegation of authority.	50.201
		Delinquency notices.	49.607
	Federal Supply Schedules:	Delinquent performance.	8.405-4
		Delivery incentives.	16.402-3
		Delivery of Excess Quantities.	52.211-17
		Delivery of Government-furnished property.	47.305-12
		Delivery or Performance Schedules	11.4
	Definition:	Delivery order	2.101
	Definition:	Delivery order contract	16.501-1
		Delivery orders and orders under basic ordering agreements (OF 347).	53.216-1
	Definition:	Delivery payment	32.001
	Definition:	Delivery payment	32.202-2
	Standard	delivery terms and contract clauses.	47.303
	Determination of	delivery terms.	47.304
	Liability for Government Property	Demolition Services Contracts.	52.245-6
	Dismantling,	Demolition, or Removal of Improvements	37.3
	Termination for Convenience of the Government (Dismantling,	Demolition, or Removal of Improvements).	52.249-3
	Contracts for dismantling,	demolition, or removal of improvements.	46.313
	Inspection—Dismantling,	Demolition, or Removal of Improvements.	52.246-13
		Demonstration contracts.	34.005-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Service Contract Act of 1965, As Amended:	Department of Labor action.	22.1011-1
	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans:	Department of Labor notices and reports.	22.1306
	Employment of Workers with Disabilities:	Department of Labor notices.	22.1404
	Labor Standards for Contracts Involving Construction:	Department of Labor regulations.	22.403-4
	Service Contract Act of 1965, As Amended:	Department of Labor responsibilities and regulations.	22.1004
	Walsh-Healey Public Contracts Act: Regional jurisdictions of the	Department of Labor, Wage and Hour Division.	22.609
	Cooperation with the	Department of Labor.	22.406-12 22.1024
	Discovery of errors by the	Department of Labor.	22.1015
	Response to Notice by	Department of Labor.	22.1011
		Depreciation.	31.205-11
	Definition:	Deputy Assistant Secretary	22.801
		Describing Agency Needs	Part 11
	Acquisition of Commercial Items: Market research and	description of agency need.	12.202
		Description of shipment, origin, and destination.	47.207-3
	Freight Classification	Description.	52.247-53
	Definition:	Descriptive literature	2.101 52.214-21
	Sealed Bidding: Restrictions on disclosure of	descriptive literature.	14.404-4
	Sealed Bidding:	Descriptive literature.	14.202-5 52.214-21
	Definition:	Design	36.102
	Warranty of Systems and Equipment under Performance Specifications or	Design Criteria.	52.246-19
	Redesign responsibility for	design errors or deficiencies.	36.609-2
		Design within funding limitations.	36.609-1 52.236-22
	Definition:	Designated agency	32.801
	Definition:	Designated billing office	32.001
	Definition:	Designated country	25.003 52.225-5 52.225-11
	Definition:	Designated country construction material	52.225-11
	Definition:	Designated country end product	25.003 52.225-5
	Definition:	Designated payment office	32.001

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Designation of Office for Government Receipt of Electronic Funds Transfer Information	52.232-35
	Definition:	Design-bid-build	36.102
	Definition:	Design-build	36.102
	Two-Phase	Design-Build Selection Procedures	36.3
	Requirements for Registration of	Designers.	52.236-25
	Definition:	Design-to-cost	2.101
	F.o.b. Origin and/or F.o.b.	Destination Evaluation.	52.247-45
		Destination unknown.	47.305-5 52.247-49
	F.o.b.	Destination, within Consignee's Premises.	52.247-35
	C. & f.	Destination.	52.247-41
	C.i.f.	Destination.	52.247-42
	F.o.b.	Destination.	52.247-34
	F.o.b.	Destination—Evidence of Shipment.	52.247-48
		Destruction or abandonment.	45.611
	Definition:	Determination and Findings	1.701
		Determination of delivery terms.	47.304
	Special Requirements for the Acquisition of Commercial Items:	Determination of price reasonableness.	12.209
		Determination of weights.	47.207-4
	Advance Payments for Non-Commercial Items: Findings, Responsible Prospective Contractors:	determination, and authorization.	32.410
	Materials Management Acquisition Regulations System:	Determinations and documentation.	9.105-2
	Interagency Acquisitions Under the Economy Act:	Determinations and Findings	1.7
	Materials Management Acquisition Regulations System: Class	Determinations and findings requirements.	17.503
	Considerations in	determinations and findings.	1.703
	Selecting and	developing an evaluation factor or subfactor.	19.1202-3
	Definition:	Developing Requirements Documents	11.1
	Career	Development	31.205-18 35.001
	Definition:	Development, Contracting Authority, and Responsibilities	1.6
	Materials Management Acquisition Regulations System:	Deviation	1.401
	Authorized	Deviations from the MMAR	1.4
	Authorized	Deviations in Clauses.	52.252-6
	Authorized	Deviations in Provisions.	52.252-5
	Materials Management Acquisition Regulations System:	Deviations pertaining to treaties and executive agreements.	1.405

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Materials Management Acquisition Regulations System: Class	deviations.	1.404
	Individual	deviations.	1.403
	F.o.b. Origin, with	Differentials.	52.247-33
		Differing site conditions.	36.502 52.236-2
		Direct costs.	31.202
	Quantity analysis,	direct delivery, and reduction of crosshauling and backhauling.	47.305-7
	Government	Direction and Marking.	52.247-26
	Organization and	direction of the work.	36.519 52.236-19
	Definition:	Directly associated cost	31.001
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Direct-order process.	8.705-2
	Contract administration services	directory.	42.203
	Contract audit services	directory.	42.103
	Employment of Workers with	Disabilities	22.14
	Surveys of nonprofit agencies serving people who are blind or have other severe	disabilities under the Javits-Wagner-O'Day (JWOD) Program.	9.107
	Equal Opportunity for Special	Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-35
	Notice of intent to	disallow costs.	42.801 52.242-1
	Contract Administration and Audit Services:	Disallowance of Costs	42.8
	Air Transportation by U.S.-Flag Carriers:	Disallowance of expenditures.	47.403-3
		Disallowing costs after incurrence.	42.803
	Advance Payments for Non-Commercial Items: Recommendation for	disapproval.	32.409-2
		Disaster or Emergency Assistance Activities	26.2
		Disclosure and Consistency of Cost Accounting Practices.	52.230-3
		Disclosure of approval status.	44.306
	Sealed Bidding: Restrictions on	disclosure of descriptive literature.	14.404-4
		Disclosure of preaward information.	9.105-3
		Disclosure requirements.	30.202
	Filing	Disclosure Statements.	30.202-5
	Subcontractor	Disclosure Statements.	30.202-8
		Disclosure, protection, and marking of contractor bid or proposal information and source selection information.	3.104-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Certification and	disclosure.	3.803
		Discontinuance of vouchers.	49.302
	Procedure after	discontinuing vouchers.	49.303
	Definition:	Discount for prompt payment	32.902
		Discounts for Prompt Payment.	52.232-8
	Sealed Bidding: Prompt payment	discounts.	14.408-3
	Contracting by Negotiation:	Discovery of mistakes.	15.508
	Definition:	Discrepancies incident to shipment	45.501
		Discrepancies incident to shipment of supplies.	42.1405
		Discrepancies incident to shipment.	45.502-2
	Definition:	Discussions	52.215-1
		Dismantling, Demolition, or Removal of Improvements	37.3
	Contracts for	dismantling, demolition, or removal of improvements.	46.313
	Inspection—	Dismantling, Demolition, or Removal of Improvements.	52.246-13
	Termination for Convenience of the Government	Dismantling, Demolition, or Removal of Improvements.	52.249-3
	Property	disposal determinations.	45.613
		Disposal methods.	45.603
	Storage, handling, and	disposal of contract files.	4.805
	Reporting, Redistribution, and	Disposal of Contractor Inventory	45.6
		Disposition of disputes concerning construction contract labor standards enforcement.	22.406-10
		Disposition.	50.306
		Disputes and Appeals	33.2
		Disputes clause.	52.233-1
	Disposition of	disputes concerning construction contract labor standards enforcement.	22.406-10
		Disputes concerning labor standards.	22.1026 52.222-14
	Protests,	Disputes, and Appeals	Part 33
	Reporting labor	disputes.	22.101-3
	Federal Supply Schedules:	Disputes.	8.405-7
		Disqualification.	3.104-5
	Publicizing Contract Actions: Methods of	disseminating information.	5.101
	Publicizing Contract Actions:	Dissemination of Information	5.1
	Contract	Distribution	4.2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Distribution of documents.	42.706
	Annotation and	distribution of shipping and billing documents.	47.207-9
	Agency	distribution requirements.	4.202
	Sealed Bidding:	Documentation of award.	14.408-7
	Special	documentation requirements.	13.501
	Options:	Documentation requirements.	17.205
	Clearance and	Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	52.247-52
	Responsible Prospective Contractors: Determinations and	documentation.	9.105-2
	Contract Pricing:	Documentation.	15.406
	Contract Pricing:	Documenting the negotiation.	15.406-3
	Paper	Documents	4.3
	Clearance and Documentation Requirements—Shipments to	DOD Air or Water Terminal Transshipment Points.	52.247-52
	Availability of Specifications Listed in the	DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Availability of Specifications Listed in the DoD Index of Specifications and Standards	DoDISS and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Definition:	Domestic construction material	25.003 52.225-9 52.225-11
		Domestic contracts.	29.401
	Definition:	Domestic end product	25.003 52.225-1 52.225-3
	Definition:	Domestic offer	25.003
	Contributions or	donations.	31.205-8
		Donations.	45.609
	Specifications and	Drawings for Construction.	52.236-21
	Definition:	Drug-free workplace	2.101
	Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and	Drug-Free Workplace	Part 23
	Definition:	Dry bulk carrier	47.501
	Definition:	Dry cargo liner	47.501
	Using the Defense Transportation System	DTS.	47.301-3
	Definition:	Due date	32.001

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Data Universal Numbering System	DUNS Number.	52.204-6
		Duration of contract and time of performance.	47.207-2
	Scope and	Duration of Contract.	52.241-3
		Duties of termination contracting officer after issuance of notice of termination.	49.105
	Final Decisions: Contracting officer's	duties upon appeal.	33.212
		Duty-Free Entry.	52.225-8
	Definition:	E.O. 11246	22.801
	Utilization of Indian Organizations and Indian-Owned	Economic Enterprises.	52.226-1
		Economic planning costs.	31.205-12
	Fixed-price contracts with	economic price adjustment.	16.203
	Sealed Bidding:	Economic price adjustment.	14.408-4
	Fixed-Price Contracts:	Economic Price Adjustment—Labor and Material.	52.216-4
	Fixed-Price Contracts:	Economic Price Adjustment—Semistandard Supplies.	52.216-3
	Fixed-Price Contracts:	Economic Price Adjustment—Standard Supplies.	52.216-2
	Sealed Bidding:	Economic purchase quantities (supplies).	14.212
		Economic Purchase Quantity—Supplies.	52.207-4
	Planning for the Purchase of Supplies in	Economic Quantities	7.2
	Current	editions.	53.102
	Training and	education costs.	31.205-44
	Termination for Convenience of the Government	Educational and Other Nonprofit Institutions.	52.249-5
	Cost Accounting Standards—	Educational Institution.	52.230-5
	Contracts with	Educational Institutions	31.3
	Contracts for research with	educational institutions and nonprofit organizations.	35.015
	Accountable Facilities (Nonprofit	Educational Institutions).	52.245-13
	Contract Purpose (Nonprofit	Educational Institutions).	52.245-12
	Indirect Cost Rates:	Educational institutions.	42.705-3
	Debarment, Suspension, and Ineligibility:	Effect of listing.	9.405
	Definition:	Effective competition	34.001
	Definition:	Effective date	43.101
	Definition:	Effective date of termination	2.101
	Definition:	EFT information	32.1102
		EFT information submitted by offerors.	32.1109
	Protection of	EFT information.	32.1104
		EFT mechanisms.	32.1106

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Electric Service Territory Compliance Representation.	52.241-1
		Electronic and Information Technology	39.2
	Definition:	Electronic and information technology (EIT)	2.101
	Receipt of an unreadable	electronic bid.	14.406
		Electronic bids.	14.202-8
	Definition:	Electronic commerce	2.101
		Electronic Commerce in Contracting	4.5
	Definition:	Electronic data interchange (EDI)	2.101
		Electronic Funds Transfer	32.11
	Definition:	Electronic Funds Transfer (EFT)	2.101 32.1102
	Submission of	Electronic Funds Transfer Information with Offer.	52.232-38
	Designation of Office for Government Receipt of	Electronic Funds Transfer Information.	52.232-35
	Payment by	Electronic Funds Transfer—Central Contractor Registration.	52.232-33
	Payment by	Electronic Funds Transfer—Other Than Central Contractor Registration.	52.232-34
		Eligibility requirements for participating in the program.	19.703
	Certification of	Eligibility.	52.222-15
	Definition:	Eligible offer	25.003
	Definition:	Eligible product	25.003
	Disaster or	Emergency Assistance Activities	26-2
	Definition:	Emerging small business	52.212-3
	Definition:	Employee	23.503 52.223-6
		Employee morale, health, welfare, food service, and dormitory costs and credits.	31.205-13
	Definition:	Employer's identification number	52.222-27
		Employment of Workers with Disabilities	22.14
		Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-37
	Completed	end items.	49.205
	Definition:	End product	2.101 25.003 52.225-1 52.225-3 52.225-5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Energy and Water Efficiency and Renewable Energy	23.2
	Definition:	Energy-efficient product	2.101
		Energy-efficient products.	23.203
	Definition:	Energy-savings performance contract	2.101
		Energy-savings performance contracts.	23.204
Application of Labor Laws to Government Acquisitions: Administration and		enforcement.	22.303 22.406 22.809
Manufacturing and production		engineering costs.	31.205-25
Industrial mobilization;		engineering, developmental, or research capability; or expert services.	6.302-3
Value		Engineering.	52.248-1
Value		Engineering—Architect-Engineer.	52.248-2
Value		Engineering—Construction.	52.248-3
Inconsistency between		English Version and Translation of Contract.	52.225-14
		Entertainment costs.	31.205-14
		Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace	Part 23
	Definition:	Environmentally preferable	2.101
	Contracting for	Environmentally Preferable Products and Services	23.7
	Definition:	EPA-designated product	23.401
Estimate of Percentage of Recovered Material Content for		EPA-Designated Products.	52.223-9
		Equal Employment Opportunity	22.8
Notice of Requirement for Affirmative Action to Ensure		Equal Employment Opportunity for Construction.	52.222-23
Sealed Bidding:		Equal low bids.	14.408-6 52.219-2
	Definition:	Equal Opportunity clause	22.801
Preaward On-Site		Equal Opportunity Compliance Evaluation.	52.222-24
		Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-35
		Equal Opportunity.	52.222-26
Acquisition Planning:		Equipment Lease or Purchase	7.4
Facilities		Equipment Modernization.	52.245-16
Warranty of Systems and		Equipment under Performance Specifications or Design Criteria.	52.246-19
Government-Furnished		Equipment With or Without Operators.	52.247-25
Protection of Government Buildings,		Equipment, and Vegetation.	52.237-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Protection of Existing Vegetation, Structures,	Equipment, Utilities, and Improvements.	52.236-9
	Special Test	Equipment.	52.245-18
		Equitable adjustment after partial termination.	49.208
		Equitable adjustments for new or modified standards.	30.602-1
	Statement of	Equivalent Rates for Federal Hires.	52.222-42
		Establishing and Administering Federal Supply Schedules	38.2
		Establishing or maintaining alternative sources.	6.202
	Delivery or Performance Schedules: Factors to consider in	establishing schedules.	11.402
		Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	52.223-9
		Estimated Quantities or Weights for Evaluation of Offers.	52.247-20
		Estimated Weights or Quantities Not Guaranteed.	52.247-8
	Announcements of long-range acquisition	estimates.	5.404-2
	Release of long-range acquisition	estimates.	5.404
	Definition:	Estimating costs	31.001
		Estimating systems.	15.407-5
		Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.	3.104-6
	Sanctioned	European Union Country End Products.	52.225-15
	Sanctioned	European Union Country Services.	52.225-16
		Evaluating Foreign Offers—Supply Contracts	25.5
		Evaluating offers of foreign construction material.	25.204
		Evaluating the certification.	3.103-2
	Streamlined Procedures for	Evaluation and Solicitation for Commercial Items	12.6
	Architect-Engineer Services:	Evaluation board functions.	36.602-3
	Architect-Engineer Services:	Evaluation boards.	36.602-2
		Evaluation Exclusive of Options.	52.217-3
		Evaluation factor or subfactor.	19.1202
	Contracting by Negotiation:	Evaluation factors and significant subfactors.	15.304
	Research and Development Contracting:	Evaluation for award.	35.008
	Sealed Bidding:	Evaluation of Bids for Multiple Awards.	52.214-22
		Evaluation of Compensation for Professional Employees.	52.222-46
		Evaluation of contract administration offices.	42.403
		Evaluation of Export Offers.	52.247-51
	Shipping Point(s) Used in	Evaluation of F.o.b. Origin Offers.	52.247-46

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Evaluation of Foreign Currency Offers.	52.225-17
	Streamlined	evaluation of offers.	12.602
	Estimated Quantities or Weights for	Evaluation of Offers.	52.247-20
	Options:	Evaluation of Options Exercised at Time of Contract Award.	52.217-4
	Options:	Evaluation of Options.	52.217-5
	Soliciting competition,	evaluation of quotations or offers, award and documentation.	13.106
	No	Evaluation of Transportation Costs.	52.247-50
		Evaluation procedures.	45.202
	Contractor Qualifications: Providing	evaluation services.	9.505-3
	Acquisition of Commercial Items: Procedures for solicitation,	evaluation, and award.	12.203
		Evaluation, offering, and acceptance.	19.804
	Contracting officer's	evaluation.	44.202
	Testing: Preaward in-use	evaluation.	11.801
	Contractor Versus Government Performance:	Evaluation.	7.306
	F.o.b. Origin and/or F.o.b. Destination	Evaluation.	52.247-45
	Options:	Evaluation.	17.206
		Evaluation—Commercial Items.	52.212-2
		Evaluation—F.o.b. Origin.	52.247-47
	F.o.b. Destination—	Evidence of Shipment.	52.247-48
	Facts and	evidence.	50.304
		Ex dock, pier, or warehouse, port of importation.	47.303-12 52.247-40
	Waiver of right to	examination of records.	25.1001
	Definition:	Excepted tax	52.229-4 52.229-6
	Definition:	Exception	53.001
	Agency and Public Participation:	Exceptions to soliciting public comments.	1.501-3
	Acquisition from Federal Prison Industries, Inc.:	Exceptions.	8.606
	Forms:	Exceptions.	53.103
	Improper Business Practices and Personal Conflicts of Interest:	Exceptions.	3.602
	Release of	excess funds.	49.105-2
	Definition:	Excess personal property	8.101
		Excess Personal Property	8.1
		Exchange of acquisition information.	5.405
		Exchanges with industry before receipt of proposals.	15.201

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Freight	Excluded.	52.247-7
		Exclusion of individual sureties.	28.203-7
	Full and Open Competition After	Exclusion of Sources	6.2
		Excusable Delays.	52.249-14
	Contract	Execution	4.1
		Execution and Commencement of Work.	52.216-23
	Definition:	Executive agency	2.101
	Definition:	Executive agreements	1.405(a)
	Deviations pertaining to treaties and	executive agreements.	1.405
		Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.	52.222-48
		Exemptions from sale by GSA.	45.610-2
	Administrative limitations, variations, tolerances, and	exemptions.	22.1003-4
	Contract Work Hours and Safety Standards Act: Variations, tolerances, and	exemptions.	22.304
	Service Contract Act of 1965, As Amended: Statutory	exemptions.	22.1003-3
	Walsh-Healey Public Contracts Act: Regulatory	exemptions.	22.604-2
	Walsh-Healey Public Contracts Act: Statutory	exemptions.	22.604-1
	Equal Employment Opportunity:	Exemptions.	22.807
	Requests for status or	expediting of response.	22.1011-2
	Disallowance of	expenditures.	47.403-3
	Other business	expenses.	31.205-28
	Determinations and Findings:	Expiration dates.	1.706
	Evaluation of	Export Offers.	52.247-51
	F.o.b. Designated Air Carrier's Terminal, Point of	Exportation.	52.247-43
	F.o.b. Inland Carrier, Point of	Exportation.	52.247-38
	Definition:	Expressly unallowable cost	31.001
		Extension of services.	37.111
	Management and Operating Contracts: Award, renewal, and	extension.	17.605
	Contract modifications (options,	extensions, changes in scope) and anniversary dates.	22.1008-6
	Time	Extensions.	52.211-13
		Extraordinary Contractual Actions	Part 50
		Extras.	52.232-11

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	F.a.s. vessel, port of shipment.	47.303-8 52.247-36
	Definition:	F.o.b.	2.101
		F.o.b. designated air carrier's terminal, point of exportation.	47.303-15
		F.o.b. designated air carrier's terminal, point of importation.	47.303-16 52.247-44
	Definition:	F.o.b. destination	2.101 52.247-34
	F.o.b. Origin and/or	F.o.b. Destination Evaluation.	52.247-45
		F.o.b. destination solicitations.	47.305-4
	Definition:	F.o.b. destination, within consignee's premises.	47.303-7 52.247-35
		F.o.b. destination.	47.303-6 52.247-34
		F.o.b. Destination—Evidence of Shipment.	52.247-48
	Definition:	F.o.b. inland carrier, point of exportation.	47.303-10 52.247-38
	Definition:	F.o.b. inland point, country of importation.	47.303-11 52.247-39
	Definition:	F.o.b. origin	2.101 52.247-29
	Solicitations	f.o.b. origin and f.o.b. destination—lowest overall cost.	47.305-2
		F.o.b. Origin and/or F.o.b. Destination Evaluation.	52.247-45
	Shipping Point(s) Used in Evaluation of	F.o.b. Origin Offers.	52.247-46
	Shipping documents covering	f.o.b. origin shipments.	42.1403
		F.o.b. origin solicitations.	47.305-3
		F.o.b. origin, contractor's facility.	47.303-2 52.247-30
	Definition:	F.o.b. origin, freight allowed.	47.303-3 52.247-31
	Definition:	F.o.b. origin, freight prepaid.	47.303-4 52.247-32
		F.o.b. Origin, Prepaid Freight—Small Package Shipments.	52.247-65
	Definition:	F.o.b. origin, with differentials.	47.303-5 52.247-33

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		F.o.b. Origin.	47.303-1 52.247-29 52.247-47
		F.o.b. Origin—Carload and Truckload Shipments.	52.247-59
		F.o.b. Origin—Government Bills of Lading or Indicia Mail.	52.242-11
		F.o.b. Origin—Government Bills of Lading or Prepaid Postage.	52.242-10
		F.o.b. Origin—Minimum Size of Shipments.	52.247-61
		F.o.b. Point for Delivery of Government-Furnished Property.	52.247-55
	Place of delivery—	f.o.b. point.	47.302
	Definition:	F.o.b. vessel, port of shipment.	47.303-9 52.247-37
	Definition:	Facilities	31.205-17 45.301 52.245-7 52.245-10 52.245-11
	Accountable	Facilities (Nonprofit Educational Institutions).	52.245-13
	Termination of Work (Consolidated Facilities or	Facilities Acquisition).	52.249-11
	Government Property	Facilities Acquisition.	52.245-10
	Definition:	Facilities capital	31.001
	Definition:	Facilities contract	45.301
	Labor standards for construction work performed under	facilities contracts.	22.405
	Optional property-related clauses for	facilities contracts.	45.302-7
	Required Government property clauses for	facilities contracts.	45.302-6
		Facilities contracts.	31.106 46.310
	Labor Standards for Construction Work—	Facilities Contracts.	52.222-17
		Facilities Equipment Modernization.	52.245-16
	Cost-Reimbursement Contracts: Allowable Cost and Payment—	Facilities Use.	52.216-14
	Government Property	Facilities Use.	52.245-11
	Government Property (Consolidated	Facilities).	52.245-7
	Adequacy of loading and unloading	facilities.	47.306-3
	Providing	facilities.	45.302
	Visits to contractors'	facilities.	42.402
	Contractor's	Facilities.	52.241-5
	Cost-Reimbursement Contracts: Allowable Cost and Payment—	Facilities.	52.216-13

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Inspection of	Facilities.	52.246-10
	Inspection of Shipping and Receiving	Facilities.	52.247-4
	Liability for the	Facilities.	52.245-8
	Limitation of Cost	Facilities.	52.232-21
	Stop-Work Order—	Facilities.	52.242-16
	Transfer of Title to the	Facilities.	52.245-15
	Use of Government	Facilities.	52.245-14
	F.o.b. Origin, Contractor's	Facility.	52.247-30
	Definitions:	FACNET	2.101
	Definition:	Facsimile	2.101
	Sealed Bidding:	Facsimile bids.	14.202-7 52.214-31
	Definition:	Facsimile proposal	52.215-5
		Factors to consider in establishing schedules.	11.402
		Facts and evidence.	50.304
	Definition:	Failure to make a good faith effort to comply with the subcontracting plan	19.701 52.219-16
		Failure to Perform.	52.249-13
		Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	52.222-43
		Fair Labor Standards Act and Service Contract Act—Price Adjustment.	52.222-44
	Application of the	Fair Labor Standards Act minimum wage.	22.1002-4
	Definition:	Fair market price	19.001
	Determination of	fair market price.	19.202-6
	Estimating the	fair market price.	19.807
		Fast Payment Procedure	13.4 52.213-1
	Definition:	Federal Acquisition Computer Network (FACNET) Architecture	2.101
		Federal Acquisition Computer Network (FACNET).	2.101
		Federal Acquisition Regulations System	Part 1
	Definition:	Federal agency	2.101 23.1003
	Definition:	Federal agency procurement	3.104-1
		Federal and State labor requirements.	22.102

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements	23.10
		Federal Excise Taxes	29.2
	Definition:	Federal helium supplier	8.501 52.208-8
	Statement of Equivalent Rates for	Federal Hires.	52.222-42
	Capability to Perform a Contract for the Relocation of a	Federal Office.	52.247-3
	Definition:	Federal Power and Water Marketing Agency	41.101
	Acquisition from	Federal Prison Industries, Inc.	8.6
	Debarment, Suspension, and Ineligibility: List of Parties Excluded from	Federal Procurement and Nonprocurement Programs.	9.404
		Federal Procurement Data System.	4.602
	Definition:	Federal Reserve Board	32.301
		Federal Supply Schedule Contracting	Part 38
		Federal Supply Schedule Program.	38.1
		Federal Supply Schedules	8.4
	Establishing and Administering	Federal Supply Schedules	38.2
	Limitations on the Payment of Funds to Influence	Federal Transactions	3.8
		Federal, State, and Local Taxes.	52.229-3 52.229-4
	Definition:	Federally Funded Research and Development Centers (FFRDCs)	2.101
		Federally Funded Research and Development Centers.	35.017
	Contracts with State, Local, and	Federally Recognized Indian Tribal Governments	31.6
	Adjustment of	fee.	49.305
	Fixed	Fee.	52.216-8
	Incentive	Fee.	52.216-10
	Contingent	Fees	3.4
	Establishing or changing an	FFRDC.	35.017-2
	Terminating an	FFRDC.	35.017-5
	Using an	FFRDC.	35.017-3
	Limitation on the creation of new	FFRDC's.	35.017-7
	Master list of	FFRDC's.	35.017-6
	Reviewing	FFRDC's.	35.017-4
	Definition:	Filed	33.101
	Government Contract	Files	4.8
	Closeout of contract	files.	4.804

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Closeout of paying office contract	files.	4.804-3
	Contents of contract	files.	4.803
	Contract	files.	4.802
	Procedures for closing out contract	files.	4.804-5
	Storage, handling, and disposal of contract	files.	4.805
		Filing of Patent Applications—Classified Subject Matter.	52.227-10
	Definition:	Final conviction	3.702
	Definition:	Final cost objective	31.001
	Definition:	Final indirect cost rate	2.101
		Final indirect cost rates.	42.705
	Certification of	Final Indirect Costs.	52.242-4
		Final payment.	49.112-2
		Final settlement.	49.303-5
		Financial and cost accounting records.	4.705-1
		Financial consultation.	32.108
	Bonds and Other	Financial Protections	28.1
		Financial Statement.	52.247-6
	Commercial Item Purchase	Financing	32.2
	Contract	Financing	Part 32
	Non-Commercial Item Purchase	Financing	32.1
	Contract	financing (SF 1443).	53.232
	Terms for	Financing of Purchases of Commercial Items.	52.232-29
	Conducting market research about	financing terms.	32.202-3
	Determining contract	financing terms.	32.203
	Invitation to Propose	Financing Terms.	52.232-31
	Acquisition of Commercial Items: Contract	financing.	12.210
	Consideration for contract	financing.	32.005
	Procedures for contracting officer-specified commercial contract	financing.	32.204
	Procedures for offeror-proposed commercial contract	financing.	32.205
	Providing contract	financing.	32.104
	Security for Government	financing.	32.202-4
	Simplified acquisition procedures	financing.	32.003
	Termination	financing.	32.109
	Materials Management Acquisition Regulations System: Determinations and	Findings	1.7
	Advance Payment for Non-Commercial Items:	Findings, determination, and authorization.	32.410

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Materials Management Acquisition Regulations System: Class determinations and	findings.	1.703
		Fines, penalties, and mischarging costs.	31.205-15
	Definition:	Firm	36.102
	Incentive Price Revision—	Firm Target.	52.216-16
	Concurrent performance of	firm-fixed-price and other types of construction contracts.	36.208
	Types of Contracts:	Firm-fixed-price contracts.	16.202
	Types of Contracts:	Firm-fixed-price, level-of-effort term contracts.	16.207
	Definition:	First article	2.101
		First Article Approval—Contractor Testing.	52.209-3
		First Article Approval—Government Testing.	52.209-4
	Definition:	First article testing	2.101
	Contractor Qualifications:	First Article Testing and Approval	9.3
	Definition:	Fiscal year	31.001
	Cost-Reimbursement Contracts:	Fixed Fee.	52.216-8
	Cost-Reimbursement Contracts:	Fixed Fee—Construction.	52.216-9
	Inspection of Research and Development—	Fixed Price.	52.246-7
	Fixed-Price Contracts:	Fixed-ceiling-price contracts with retroactive price redetermination.	16.206
	Termination for Convenience of the Government	Fixed-Price (Short Form).	52.249-1
	Payments under	Fixed-Price Architect-Engineer Contracts.	52.232-10
	Prompt Payment for	Fixed-Price Architect-Engineer Contracts.	52.232-26
	Termination	Fixed-Price Architect-Engineer.	52.249-7
	Pricing	fixed-price construction contracts.	36.207
	Payments under	Fixed-Price Construction Contracts.	52.232-5
	Default	Fixed-Price Construction.	52.249-10
	Termination of	fixed-price contracts for default.	49.402 49.504
	Additional Principles for	Fixed-Price Contracts Terminated for Convenience	49.2
	Fixed-Price Contracts:	Fixed-price contracts with economic price adjustment.	16.203
	Taxes—	Fixed-Price Contracts with Foreign Governments.	52.229-7
	Fixed-Price Contracts:	Fixed-price contracts with prospective price redetermination.	16.205
	Foreign	fixed-price contracts.	29.402-1
	Insurance under	fixed-price contracts.	28.306
	Special tooling under	fixed-price contracts.	45.306-3

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Transportation:	Fixed-price contracts.	47.104-2
		Fixed-Price Contracts.	16.2 31.102
	Government Property	Fixed-Price Contracts.	52.245-2
	Taxes—Foreign	Fixed-Price Contracts.	52.229-6
		Fixed-price contracts—complete termination.	49.603-1
		Fixed-price contracts—partial termination.	49.603-2
		Fixed-price contracts—settlements with subcontractors only.	49.603-8
		Fixed-price incentive (firm target) contracts.	16.403-1
		Fixed-price incentive (successive targets) contracts.	16.403-2
	Pricing aspects of	fixed-price incentive contract warranties.	46.707
		Fixed-price incentive contracts.	16.204 16.403
		Fixed-price research and development contracts.	46.307
	Payments under	Fixed-Price Research and Development Contracts.	52.232-2
	Default	Fixed-Price Research and Development.	52.249-9
		Fixed-price service contracts.	46.304
	Default	Fixed-Price Supply and Service.	52.249-8
		Fixed-price supply contracts.	46.302
	Changes—	Fixed-Price.	52.243-1
	Inspection of Services—	Fixed-Price.	52.246-4
	Inspection of Supplies—	Fixed-Price.	52.246-2
	Termination for Convenience of the Government	Fixed-Price.	52.249-2
	Interagency	Fleet Management System (IFMS) Vehicles and Related Services.	52.251-2
	Guidelines for implementation of the	Fly America Act.	47.403
	Performance-Based Contracting:	Follow-on and repetitive requirements.	37.602-5
	Definition:	Forced or indentured child labor	22.1501 52.212-3
		Foreign Acquisition	Part 25
	Additional	Foreign Acquisition Regulations	25.10
	Definition:	Foreign construction material	25.003 52.225-9 52.225-11
	Definition:	Foreign contractor	25.003
		Foreign contracts.	29.402
	Taxes—	Foreign Cost-Reimbursement Contracts.	52.229-8

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Foreign cost-reimbursement contracts.	29.402-2
	Contract performance in	foreign countries.	32.004
	Contractor inventory in	foreign countries.	45.610-4
	Evaluation of	Foreign Currency Offers.	52.225-17
	Use of	foreign currency.	25.1002
	Definition:	Foreign end product	25.003 52.225-1 52.225-3
		Foreign fixed-price contracts.	29.402-1
	Taxes—	Foreign Fixed-Price Contracts.	52.229-6
	Air transport agreements between the United States and	foreign governments.	47.403-2
		Foreign governments.	46.406
	Taxes—Cost-Reimbursement Contracts with	Foreign Governments.	52.229-9
	Taxes—Fixed-Price Contracts with	Foreign Governments.	52.229-7
		Foreign License and Technical Assistance Agreements	27.6
	Severance payments to	foreign nationals.	37.113
	Restriction on Severance Payments to	Foreign Nationals.	52.237-8
	Waiver of Limitation on Severance Payments to	Foreign Nationals.	52.237-9
	Definition:	Foreign offer	25.003
	Restrictions on Certain	Foreign Purchases.	52.225-13
	Definition:	Foreign-flag vessel	47.501
	Definition:	Form, fit, and function data	27.401 52.227-14 52.227-20
	Acquisition of Commercial Items: Solicitation/contract	form.	12.204
	Contract	format.	12.303
		Formats for utility service specifications.	41.701
	Illustration of	Forms	53.3
	Prescription of	Forms	53.2
	Optional	forms (OF's).	53.302
	Standard	forms (SF's).	53.301
	Standard and Optional	Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements	36.7
		Forms for settlement of terminated contracts.	49.602
		Forms for use in contracting for architect-engineer services.	36.702

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Standard and optional	forms for use in contracting for construction or dismantling, demolition, or removal of improvements.	36.701
		Forms prescribed by other regulations.	53.109
	Agency	forms.	53.303
	Bonds and bond-related	forms.	28.106-1
	Inventory schedule	forms.	49.602-2
	Obtaining	forms.	53.107
	Recommendations concerning	forms.	53.108
	Requirements for use of	forms.	53.101
	Termination settlement proposal	forms.	49.602-1
	Use of	forms.	43.301
		Forms.	13.307 15.509 41.6 Part 53
	Computer Generated	Forms.	52.253-1
	Definition:	Forward pricing rate agreement	2.101
	Contract Administration and Audit Services:	Forward Pricing Rate Agreements	42.17
	Contracting by Negotiation:	Forward pricing rate agreements.	15.407-3
	Definition:	Forward pricing rate recommendation	2.101
	Definition:	Franchise territory	41.101
	Permits, Authorities, or	Franchises.	52.247-2
	Definition:	Fraud	31.205-47
		Fraud or other criminal conduct.	49.106
	Reduction or suspension of contract payments upon finding of	fraud.	32.006
	Suspected	fraudulent claims.	33.209
	Protection of Privacy and	Freedom of Information	Part 24
		Freedom of Information Act	24.2
	Definition:	Freight	2.101
	F.o.b. Origin,	Freight Allowed.	52.247-31
	Loading, Blocking, and Bracing of	Freight Car Shipments.	52.247-58
		Freight Classification Description.	52.247-53
	Commodity description and	freight classification.	47.305-9
		Freight Excluded.	52.247-7
	Contractor Liability for Loss of and/or Damage to	Freight other than Household Goods.	52.247-22

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	F.o.b. Origin,	Freight Prepaid.	52.247-32
	Government	freight.	47.104-1
	Contractor Responsibility for Returning Undelivered	Freight.	52.247-16
	SCA Minimum Wages and	Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	52.222-47
	Wages,	fringe benefits, and overtime.	22.406-2
	Definition:	Full and open competition	2.101
	Competition Requirements:	Full and Open Competition	6.1
	Competition Requirements:	Full and Open Competition after Exclusion of Sources	6.2
	Competition Requirements: Circumstances permitting other than	full and open competition.	6.302
	Research and Development Contracts:	Full production.	34.005-6
	Contract administration	functions.	42.302
	Definition:	Funded pension cost	31.001
		Funding and term of service contracts.	37.106
	Design Within	Funding Limitations.	52.236-22
	Contract	funding requirements.	32.703
	Cancellation, Rescission, and Recovery of	Funds for Illegal or Improper Activity.	52.203-8
	Availability of	funds.	43.105
			52.232-18
	Limitation of	Funds.	52.232-22
	Withholding of	Funds.	52.222-7
	Bonds and Other Financial Protections:	Furnishing information.	28.106-6
	The need for	further certifications.	3.103-3
	Definition:	Future unit cost reduction	48.001
			52.248-1
		Gains and losses on disposition or impairment of depreciable property or other capital assets.	31.205-16
	Protests to	GAO.	33.104
	Definition:	Gateway airport abroad	47.401
	Definition:	Gateway airport in the United States	47.401
	Use of patented technology under the General Agreement on Tariffs and Trade	GATT.	27.209
	Use of patented technology under the	General Agreement on Tariffs and Trade (GATT).	27.209
	Definition:	General and administrative (G&A) expense	2.101
		General Contracting Requirements	Subchapter E
	Definition:	General freight	47.201

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Agreed Weight—	General Freight.	52.247-9
	Net Weight—	General Freight.	52.247-10
	Acquisition Planning:	General procedures.	7.104
	Release of Information:	General public.	5.402
		General Services Administration assistance.	7.403
	Submission of Commercial Transportation Bills to the	General Services Administration for Audit.	52.247-67
	Responsible Prospective Contractors:	General standards.	9.104-1
	Rights in Data—	General.	52.227-14
		Goodwill.	31.205-49
	Application of labor laws to	Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).	53.222
	First Article Testing and Approval:	Government administration procedures.	9.307
	F.o.b. Origin—	Government Bills of Lading or Indicia Mail.	52.242-11
	F.o.b. Origin—	Government Bills of Lading or Prepaid Postage.	52.242-10
	Protection of	Government Buildings, Equipment, and Vegetation.	52.237-2
		Government Contract Files	4.8
	Definition:	Government contract quality assurance	46.101
		Government Contract Quality Assurance	46.4
	Definition:	Government costs	48.001 52.248-1 52.248-3
	Suspension of Work, Stop-Work Orders, and	Government Delay of Work	42.13
		Government delay of work.	42.1304 52.242-17
		Government Direction and Marking.	52.247-26
	Use of	Government Facilities.	52.245-14
	Limitation of	Government Liability.	52.216-24
	Responsibilities and cooperation among	Government officials.	32.605
	Definition:	Government or entity of the Government	8.701
	Contractor Versus	Government Performance	7.3
	Contractor Gratuities to	Government Personnel	3.2
	Definition:	Government printing	8.801
	Definition:	Government production and research property	45.301
	Definition:	Government property	45.101
		Government Property (Consolidated Facilities).	52.245-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).	52.245-5
	Liability for	Government Property (Demolition Services Contracts).	52.245-6
		Government Property (Facilities Acquisition).	52.245-10
		Government Property (Facilities Use).	52.245-11
		Government Property (Fixed-Price Contracts).	52.245-2
	Research and Development Contracting:	Government property and title.	35.014
		Government property clauses.	45.106
		Government Property Furnished “As Is.”	52.245-19
		Government property.	49.109-3 Part 45 53.245
		Government rate tenders under section 10721 of the Interstate Commerce Act.	47.104
	Citation of	Government rate tenders.	47.104-5
		Government responsibilities.	47.207-8
	Use of	Government Sources by Contractors	Part 51
	Priorities for use of	Government supply sources.	8.001
	Use of other	Government supply sources.	8.002
		Government Supply Sources.	52.251-1
	First Article Approval—	Government Testing.	52.209-4
	Definition:	Government vessel	47.501
	Advance Notification by the	Government.	52.247-24
	Follow-up by	Government.	27.305-3
	Service Contracting: Incremental Payment by Contractor to	Government.	52.237-6
	Service Contracting: Payment by Contractor to	Government.	52.237-5
		Government-Furnished Equipment With or Without Operators.	52.247-25
	Definition:	Government-furnished property	45.101
		Government-Furnished Property (Short Form).	52.245-4
	F.o.b. Point for Delivery of	Government-Furnished Property.	52.247-55
	Identification of	Government-Furnished Property.	52.245-3
	Application to	Government-owned or leased facilities.	23.704
	The	Government’s right.	49.402-1
	Alternatives to	Government-Unique Standards.	52.211-7
	Definition:	Governmentwide commercial purchase card	13.001 32.1102

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Payment by	Governmentwide commercial purchase card.	32.1108
	Definition:	Governmentwide point of entry (GPE)	2.101
		Governmentwide point of entry.	5.003
		Granting, withholding, or withdrawing approval.	44.305
	Solicitation and acceptance of	gratuities by Government personnel.	3.101-2
	Reporting suspected violations of the	Gratuities clause.	3.203
	Contractor	Gratuities to Government Personnel	3.2
		Gratuities.	52.203-3
	Evaluating Foreign Offers—Supply Contracts:	Group award basis.	25.504-4
		Group insurance plans.	28.307-1
		GSA areawide contracts.	41.204
		GSA assistance.	41.203
	Availability of Specifications Listed in the	GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.	52.211-1
	Availability for Examination of Specifications Not Listed in the	GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-4
	Availability of Specifications Not Listed in the	GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-3
	Exemptions from sale by	GSA.	45.610-2
	Loan Guarantees for Defense Production:	Guarantee amount and maturity.	32.304-4
	Application for	guarantee.	32.304-1
	Definition:	Guaranteed loan, or V loan	32.301
		Guaranteed Shipping Characteristics.	52.247-60
	Definition:	Guaranteeing agency	32.301
		Guidelines for determining availability of personnel.	37.204
	Actions At or Below the Micro-Purchase Threshold: Purchase	guidelines.	13.202
	Statement of	guiding principles for the Federal Acquisition System.	1.102
	Government Contract Files: Storage,	handling, and disposal of contract files.	4.805
	Definition:	Hazardous material	23.301 52.223-3
		Hazardous Material Identification and Material Safety Data.	23.3 52.223-3
	Special procedures for unusually	hazardous or nuclear risks.	50.403
	Definition:	Head of the agency	2.101 52.202-1
	Definition:	Head of the contracting activity	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Requests for	hearing.	22.1021
	Acquisition of	Helium	8.5
		Higher-level contract quality requirement.	46.311
	Definition:	High-value item	46.802
	Limitation of Liability—	High-Value Items.	52.246-24
	Definition:	Historically black college or university	2.101
	Definition:	Home office	31.001
	Definition:	Household goods	47.201
	Net Weight—	Household Goods or Office Furniture.	52.247-11
	Contractor Liability for Loss of and/or Damage to	Household Goods.	52.247-23
	Contractor Liability for Loss of and/or Damage to Freight other than	Household Goods.	52.247-22
	Definition:	HUBZone	2.101
	Definition:	HUBZone small business concern	2.101
	Definition:	Identical bids	3.302
		Identification and availability of specifications.	11.201
	Taxpayer	identification information.	4.203
		Identification of Government-Furnished Property.	52.245-3
	Instructions for Using Provisions and Clauses:	Identification of provisions and clauses.	52.103
	Definition:	Idle capacity	31.205-17
	Definition:	Idle facilities	31.205-17
	Contractor Use of Interagency Fleet Management System	IFMS Vehicles	51.2
	Use of interagency fleet management system	IFMS vehicles and related services.	51.204
	Interagency Fleet Management System	IFMS Vehicles and Related Services.	52.251-2
	Irrevocable letter of credit	ILC.	28.204-3
	Cancellation, Rescission, and Recovery of Funds for	Illegal or Improper Activity.	52.203-8
	Price or Fee Adjustment for	Illegal or Improper Activity.	52.203-10
		Illustration of Forms	53.3
	Definition:	Immediate-gain actuarial cost method	31.001
	Ex Dock, Pier, or Warehouse, Port of	Importation.	52.247-40
	F.o.b. Designated Air Carrier's Terminal, Point of	Importation.	52.247-44
	F.o.b. Inland Point, Country of	Importation.	52.247-39
		Impracticality of submission.	30.202-2
	Definition:	Imprest fund	13.001
	Simplified Acquisition Methods:	Imprest funds and third party drafts.	13.305
	Other	Improper Business Practices	3.5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Improper Business Practices and Personal Conflicts of Interest	Part 3
	Definition:	Improper influence	3.401
	Dismantling, Demolition, or Removal of	Improvements	37.3
	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of	Improvements).	52.249-3
	Inspection—Dismantling, Demolition, or Removal of	Improvements.	52.246-13
	Protection of Existing Vegetation, Structures, Equipment, Utilities, and	Improvements.	52.236-9
	Definition:	In excess of \$10,000,000	3.104-1
	Definition:	In writing or written	2.101 52.215-1
	Pricing aspects of fixed-price	incentive contract warranties.	46.707
	Types of Contracts:	Incentive Contracts	16.4
	Cost-reimbursement	incentive contracts.	16.405
	Cost-Reimbursement Contracts:	Incentive Fee.	52.216-10
	Incentive Contracts:	Incentive Price Revision—Firm Target.	52.216-16
	Incentive Contracts:	Incentive Price Revision—Successive Targets.	52.216-17
		Incentive Subcontracting Program.	52.219-10
		Incentive subcontracting with small disadvantaged business concerns.	19.1203
	Incentive Contracts: Cost-plus-	incentive-fee contracts.	16.405-1
	Incentive Contracts: Application of predetermined, formula-type	incentives.	16.402
	Incentive Contracts: Delivery	incentives.	16.402-3
	Incentive Contracts: Performance	incentives.	16.402-2
	Incentive Contracts: Relationship to other	incentives.	48.105
	Clauses	Incorporated by Reference.	52.252-2
	Solicitation Provisions	Incorporated by Reference.	52.252-1
		Incorporating provisions and clauses.	52.102
		Incremental Payment by Contractor to Government.	52.237-6
		Indefinite Quantity.	52.216-22
		Indefinite-Delivery Contracts	16.5
		Indefinite-delivery contracts for leased equipment.	29.401-1
		Indefinite-quantity contracts.	16.504
		Indemnification and Medical Liability Insurance.	52.237-7
	Patent	indemnification of Government by contractor.	27.203
	Action on	indemnification requests.	50.403-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Indemnification requests.	50.403-1
		Indemnification Under Public Law 85-804.	52.250-1
	Insurance and	indemnification.	31.205-19
	Clause for Government waiver of	indemnity.	27.203-6
	Patent	Indemnity.	52.227-3
	Waiver of	Indemnity.	52.227-5
	Certificate of	Independent Price Determination.	52.203-2
		Independent pricing.	3.103
	Definition:	Independent research and development (IR&D) cost	31.001
		Independent research and development and bid and proposal costs.	31.205-18
	Definition:	Indian	26.101 52.226-1
		Indian Incentive Program	26.1
	Definition:	Indian organization	26.101 52.226-1
	Utilization of	Indian Organizations and Indian-Owned Economic Enterprises.	52.226-1
	Contracts with State, local, and federally recognized	Indian tribal governments.	31.107
	Contracts with State, Local, and Federally Recognized	Indian Tribal Governments.	31.6
	Definition:	Indian tribe	26.101 52.226-1
	Definition:	Indian tribe, and tribal organization	3.801 52.203-12(a)
	Definition:	Indian-owned economic enterprise	26.101 52.226-1
	Utilization of Indian Organizations and	Indian-Owned Economic Enterprises.	52.226-1
	F.o.b. Origin—Government Bills of Lading or	Indicia Mail.	52.242-11
	Definition:	Indictment	9.403
	Definition:	Indirect cost	2.101
	Definition:	Indirect cost pools	31.001
	Definition:	Indirect cost rate	2.101
		Indirect cost rate certification and penalties on unallowable costs.	31.110
		Indirect Cost Rates	42.7
	Cost-sharing rates and limitations on	indirect cost rates.	42.707
	Cost-Reimbursement Contracts: Predetermined	Indirect Cost Rates.	52.216-15
	Adjustment of	indirect costs.	49.303-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Certificate of	indirect costs.	42.703-2
		Indirect costs.	31.203
	Certification of Final	Indirect Costs.	52.242-4
	Definition:	Individual	23.503 24.101 52.223-6
	Definition:	Individual contract plan	19.701 52.219-9
	Federal Acquisition Regulations System:	Individual deviations.	1.403
	Definition:	Individual item record	45.501
	Contracting with	individual pool members.	9.703
		Industrial mobilization; engineering, developmental, or research capability; or expert services.	6.302-3
		Industrial Resources Developed Under Defense Production Act Title III.	52.234-1
	Definition:	Industry	19.001
	Safeguarding Classified Information Within	Industry	4.4
	Debarment, Suspension, and	Ineligibility	9.4
	Service Contract Act of 1965, As Amended:	Ineligibility of violators.	22.1025
	Definition:	Ineligible	2.101
	Definition:	Influencing or attempting to influence	3.801 52.203-12(a)
	Formalizing	informal commitments.	50.302-3
	Minor	informalities or irregularities in bids.	14.405
	Publicizing Contract Actions: Release of	Information	5.4
	Required Sources of Supplies and Services:	Information on available excess personal property.	8.103
	Definition:	Information other than cost or pricing data	2.101
	EFT	information submitted by offerors.	32.1109
	Definition:	Information technology	2.101
		Information technology services.	39.104
	Acquisition of	Information Technology.	Part 39
		Information to bidders.	14.409
	Reporting contract	information to the IRS.	4.903
	Reporting payment	information to the IRS.	4.904
	Safeguarding Classified	Information Within Industry	4.4
	Contractor Qualifications: Obtaining access to proprietary	information.	9.505-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Publicizing Contract Actions: Methods of disseminating	information.	5.101
	Responsible Prospective Contractors: Obtaining	information.	9.105-1
	Sealed Bidding: Release of acquisition	information.	14.211
	Pollution Prevention and Right-to-Know	Information.	52.223-5
	Definition:	Inherently governmental function	2.101
		Inherently Governmental Functions	7.5
	F.o.b.	Inland Carrier, Point of Exportation.	52.247-38
	F.o.b.	Inland Point, Country of Importation.	52.247-39
		Inquiries regarding compliance with E.O. 11246.	22.806
	Definition:	Inspection	2.101
		Inspection and acceptance.	8.405-3
	Government reliance on	inspection by contractor.	46.202-2
		Inspection of Construction.	52.246-12
		Inspection of Facilities.	52.246-10
		Inspection of Research and Development (Short Form).	52.246-9
		Inspection of Research and Development—Cost Reimbursement.	52.246-8
		Inspection of Research and Development—Fixed Price.	52.246-7
		Inspection of Services—Cost-Reimbursement.	52.246-5
		Inspection of Services—Fixed-Price.	52.246-4
		Inspection of Shipping and Receiving Facilities.	52.247-4
		Inspection of site and examination of data.	36.210
		Inspection of Supplies—Cost-Reimbursement.	52.246-3
		Inspection of Supplies—Fixed-Price.	52.246-2
		Inspection of Transportation.	52.246-14
	Contractor	inspection requirements.	46.301 52.246-1
	Standard	inspection requirements.	46.202-3
		Inspection—Dismantling, Demolition, or Removal of Improvements.	52.246-13
		Inspection—Time-and-Material and Labor-Hour.	52.246-6
	Definition:	Inspector General	3.901
		Installment Payments for Commercial Items.	52.232-30
	Definition:	Instant contract	48.001 52.248-1
	Definition:	Instant contract savings	52.248-3

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Instant unit cost reduction	48.001 52.248-1
		Instructions for preparing and submitting schedules of contractor inventory.	45.606-5
	Table 15-2—	Instructions for Submitting Cost or Pricing Data.	15.408
		Instructions for Using Provisions and Clauses	52.1
		Instructions to Offerors—Commercial Items.	52.212-1
		Instructions to Offerors—Competitive Acquisition.	52.215-1
	Packing, marking, and consignment	instructions.	47.305-10
		Insufficient causes for not setting aside an acquisition.	19.502-5
		Insurance	28.3
	Definition:	Insurance	2.101
	Workers' Compensation	Insurance (Defense Base Act).	52.228-3
	Definition:	Insurance administration expenses	31.001
		Insurance against loss of or damage to Government property.	28.303
		Insurance and indemnification.	31.205-19
	Contract clause for	insurance of leased motor vehicles.	28.312
	Contract clauses for	insurance of transportation or transportation-related services.	28.313
	Workers' Compensation and War-Hazard	Insurance Overseas.	52.228-4
	Group	insurance plans.	28.307-1
	Solicitation provision and contract clause on liability	insurance under cost-reimbursement contracts.	28.311
		Insurance under cost-reimbursement contracts.	28.307
		Insurance under fixed-price contracts.	28.306
	Bonds and	insurance.	53.228
	Contract clauses for workers' compensation	insurance.	28.309
	Liability and	insurance.	47.207-7
	Overseas workers' compensation and war hazard	insurance.	28.305
	Transportation	insurance.	47.102
	Bonds and	Insurance.	Part 28
	Cargo	Insurance.	52.228-9
	Indemnification and Medical Liability	Insurance.	52.237-7
	Research and Development Contracting:	Insurance.	35.013
	Vehicular and General Public Liability	Insurance.	52.228-10
	Liability and	Insurance—Leased Motor Vehicles.	52.228-8
		Insurance—Liability to Third Persons.	52.228-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Insurance—Work on a Government Installation.	52.228-5
	Definition:	Intangible capital asset	31.001
		Integrity of Unit Prices.	52.215-14
	Procurement	integrity.	3.104
	Notice of	Intent to Disallow Costs.	52.242-1
	Definition:	Interagency acquisition	17.501
		Interagency Acquisitions Under the Economy Act	17.5
	Acquisition of Utility Services:	Interagency agreements.	41.206
	Contract Administration and Audit Services:	Interagency agreements.	42.002
	Use of	interagency fleet management system (IFMS) vehicles and related services.	51.204
	Contractor Use of	Interagency Fleet Management System (IFMS) Vehicles.	51.2 52.251-2
		Interest and other financial costs.	31.205-20
		Interest charges.	32.614-1
	Contract Debts:	Interest credits.	32.614-2
		Interest on claims.	33.208
	Computing	interest.	42.709-4
	Advance Payments for Non-Commercial Items:	Interest.	32.407
	Contract Debts:	Interest.	32.614 52.232-17
	Definition:	Interested party	26.101 52.226-1
	Definition:	Interested party for the purpose of filing a protest	33.101
	Other Than Full and Open Competition:	International agreement.	6.302-4
	Definition:	International air transportation	47.401 52.247-63
	Rulings and	interpretations of the Walsh-Healey Public Contracts Act.	22.605
	Government rate tenders under section 10721 of the	Interstate Commerce Act.	47.104
	Definition:	Intervention	41.101
	Definition:	Invention	27.301 52.227-11 52.227-12 52.227-13
	Publication or release of	invention disclosures.	27.305-5
	Conveyance of	invention rights acquired by the Government.	27.305-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Inventories upon termination or completion.	45.508-1
	Reporting, Redistribution, and Disposal of Contractor	Inventory	45.6
		Inventory schedule forms.	49.602-2
	Submission of	inventory schedules.	49.206-3 49.303-2
		Inventory schedules.	45.606
	Subcontractor	inventory.	45.614
	Site	Investigation and Conditions Affecting the Work.	52.236-3
	Labor Standards for Contracts Involving Construction:	Investigations.	22.406-8
	Amendment of	invitation for bids.	14.208
		Invitation to Propose Financing Terms.	52.232-31
		Invitation to Propose Performance-Based Payments.	52.232-28
	Sealed Bidding: Cancellation of	invitations after opening.	14.404-1
	Sealed Bidding: Cancellation of	invitations before opening.	14.209
	Records of	invitations for bids and records of bids.	14.204
	Dissemination of information concerning	invitations for bids.	14.203-2
	Final review of	invitations for bids.	14.202-6
	Preparation of	invitations for bids.	14.201
	Special Aspects of Contracting for Construction:	Invitations for bids.	36.213-3
	Amendments to	Invitations for Bids.	52.214-3
	Definition:	Invoice	2.101
	Definition:	Invoice payment	32.001
		Invoices.	52.213-2
	Contractor's	Invoices.	52.247-28
	Minor informalities or	irregularities in bids.	14.405
	Definition:	Irrevocable letter of credit	2.101 52.228-14
		Irrevocable letter of credit (ILC).	28.204-3 52.228-14
	Reporting contract information to the	IRS.	4.903
	Reporting payment information to the	IRS.	4.904
	Definition:	Israeli end product	25.003 52.225-3
	Materials Management Acquisition Regulations System: Purpose, Authority,	issuance	1.1
	Materials Management Acquisition Regulations System:	issuance.	1.105

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Issue in controversy	33.201
	Definition:	Item of supply	34.101
	Selecting and Developing Requirements Documents:	Items peculiar to one manufacturer.	11.105
	Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the	Javits-Wagner-O'Day (JWOD) Program.	9.107
	Definition:	Job	31.001
	Definition:	Job class of employees	31.001
		Joint settlement of two or more settlement proposals.	49.109-6
	Recognition of	judgments and arbitration awards.	49.108-5
	Other Than Full and Open Competition: Approval of the	justification.	6.304
	Other Than Full and Open Competition: Availability of the	justification.	6.305
	Other Than Full and Open Competition:	Justifications.	6.303
	Definition:	Kickback	3.502-1 52.203-7(a)
	Subcontractor	kickbacks.	3.502
	Economic Price Adjustment—	Labor and Material.	52.216-4
	Definition:	Labor cost at standard	31.001
	Reporting	labor disputes.	22.101-3
	Notice to the Government of	Labor Disputes.	52.222-1
	Application of	Labor Laws to Government Acquisitions	Part 22
	Application of	labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).	53.222
	Definition:	Labor market	31.001
		Labor relations costs.	31.205-21
		Labor relations.	22.101
	Federal and State	labor requirements.	22.102
	Disposition of disputes concerning construction contract	labor standards enforcement.	22.406-10
		Labor standards for construction work performed under facilities contracts.	22.405
		Labor Standards for Construction Work—Facilities Contracts.	52.222-17
		Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.	22.404-12
		Labor Standards for Contracts Involving Construction	22.4
	Disputes concerning	labor standards.	22.1026 52.222-14

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Dismantling, Demolition, or Removal of Improvements:	Labor standards.	37.301
	Subcontracts	Labor Standards.	52.222-11
	Definition:	Labor surplus area	2.101
	Definition:	Labor surplus area concern	2.101
	Supervision,	Labor, or Materials.	52.247-12
	Convict	Labor.	52.222-3
	Definition:	Laborers or mechanics	22.401
	Government Property (Cost-Reimbursement, Time-and-Material, or	Labor-Hour Contracts).	52.245-5
	Time-and-material and	labor-hour contracts.	46.306
	Types of Contracts:	Labor-hour contracts.	16.602
	Payments under Time-and-Materials and	Labor-Hour Contracts.	52.232-7
	Types of Contracts: Time-and-Materials,	Labor-Hour, and Letter Contracts	16.6
	Inspection—Time-and-Material and	Labor-Hour.	52.246-6
	Changes—Time-and-Materials or	Labor-Hours.	52.243-3
	Definition:	Labor-rate standard	31.001
	Definition:	Labor-time standard	31.001
		Late Bids/Offers—Commercial Items.	52.212-1
		Late receipt or nonreceipt of wage determination.	22.1012
	Response to	late submission of Notice—no collective bargaining agreement.	22.1012-4
	Response to	late submission of Notice—with collective bargaining agreement.	22.1012-5
		Late Submissions, Modifications, and Withdrawals of Bids.	52.214-7
		Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	52.214-23
	Definition:	Latent defect	2.101
	Federal Compliance with Right-to-Know	Laws and Pollution Prevention Requirements	23.10
		Layout of work.	36.517 52.236-17
	Indefinite-delivery contracts for	leased equipment.	29.401-1
	Application to Government-owned or	leased facilities.	23.704
	Liability and Insurance—	Leased Motor Vehicles.	52.228-8
	Condition of	Leased Vehicles.	52.208-5
	Marking of	Leased Vehicles.	52.208-6
	Tagging of	Leased Vehicles.	52.208-7
	Definition:	Leasing	8.1101
		Leasing of Motor Vehicles	8.11

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Legal effect of quotations.	13.004
	Definition:	Legal proceedings	9.403
	Time-and-Materials, Labor-Hour, and	Letter Contracts	16.6
		Letter contracts.	16.603
		Letter notice.	49.601-2
	Irrevocable	Letter of Credit.	52.228-14
		Letters of credit.	32.406
		Liability and insurance.	47.207-7
		Liability and Insurance—Leased Motor Vehicles.	52.228-8
		Liability for Government costs resulting from design errors or deficiencies.	36.608
		Liability for Government Property (Demolition Services Contracts).	52.245-6
	Responsibility and	liability for Government property.	45.103
	Contractor	Liability for Loss of and/or Damage to Freight other than Household Goods.	52.247-22
	Contractor	Liability for Loss of and/or Damage to Household Goods.	52.247-23
	Contractor	Liability for Loss of or Damage to Property of the Government	46.8
	Contractor	Liability for Personal Injury and/or Property Damage.	52.247-21
		Liability for the Facilities.	52.245-8
	Vehicular and General Public	Liability Insurance.	52.228-10
	Insurance—	Liability to Third Persons.	52.228-7
	Bonds and Insurance:	Liability.	28.307-2
	Limitation of	Liability.	52.246-23
	Termination	Liability.	52.241-10
	Limitation of	Liability—High-Value Items.	52.246-24
	Limitation of	Liability—Services.	52.246-25
		Licensing background patent rights to third parties.	27.306
	Release of	lien.	28.203-5
	Definition:	Life-cycle cost	7.101 52.248-2
		Limitation of Cost (Facilities).	52.232-21
		Limitation of cost or funds.	32.704
		Limitation of Cost.	52.232-20
		Limitation of Funds.	52.232-22
		Limitation of Government Liability.	52.216-24

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contractor Liability for Loss of or Damage to Property of the Government:	Limitation of Liability.	52.246-23
		Limitation of Liability—High-Value Items.	52.246-24
		Limitation of Liability—Services.	52.246-25
		Limitation on settlements.	49.207
	Waiver of	Limitation on Severance Payments to Foreign Nationals.	52.237-9
		Limitation on the Payment of Funds to Influence Federal Transactions	3.8
		Limitation on Withholding of Payments.	52.232-9
		Limitations on exercise of authority.	50.203
	Delegation of and	Limitations on Exercise of Authority.	50.2
	Cost-sharing rates and	limitations on indirect cost rates.	42.707
	Competition Requirements:	Limitations.	6.002
	Federal Acquisition Regulations System:	Limitations.	1.302
	Warranties:	Limitations.	46.705
	Definition:	Limited rights	27.401 52.227-14
	Definition:	Limited rights data	27.401 52.227-14 52.227-20
		Limited screening.	45.608-4
	Definition:	Line item	3.302 45.601
	Contract	Line Items	4.10
		Liquidated damages and overtime pay.	22.302
	Special Aspects of Contracting for Construction:	Liquidated damages.	36.206
	Describing Agency Needs:	Liquidated Damages.	11.5
		Liquidated Damages—Construction.	52.211-12
		Liquidated Damages—Subcontracting Plan.	52.219-16
		Liquidated Damages—Supplies, Services, or Research and Development.	52.211-11
		Liquidation of liability.	49.406
	Establishing alternate	liquidation rates.	32.503-10
		Liquidation rates—alternate method.	32.503-9
		Liquidation rates—ordinary method.	32.503-8
	Definition:	List of Parties Excluded from Federal Procurement and Nonprocurement Programs	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Procedures for acquiring end products on the	List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.	22.1501
	Sealed Bidding: Establishment of	lists.	14.205-1
	Sealed Bidding: Excessively long solicitation mailing	lists.	14.205-4
	Sealed Bidding: Reinstatement on solicitation mailing	lists.	14.205-3
	Sealed Bidding: Release of solicitation mailing	lists.	14.205-5
	Sealed Bidding: Removal of names from solicitation mailing	lists.	14.205-2
	Descriptive	literature in sealed bidding.	14.202-5
	Contractor Responsibility for	Loading and Unloading.	52.247-15
		Loading responsibilities of contractors.	47.305-15
		Loading, Blocking, and Bracing of Freight Car Shipments.	52.247-58
		Loan Guarantees for Defense Production	32.3
		Loan guarantees for subcontracts.	32.306
		Loan guarantees for terminated contracts.	32.305
	Contract surety bonds and	loan guarantees.	32.304-7
		Lobbying and political activity costs.	31.205-22
	Definition:	Local government	3.801 52.203-12(a)
	Definition:	Local taxes	52.229-5
	Publicizing Contract Actions: Announcements of	long-range acquisition estimates.	5.404-2
	Publicizing Contract Actions: Release of	long-range acquisition estimates.	5.404
	Contractor Liability for	Loss of and/or Damage to Freight other than Household Goods.	52.247-22
	Contractor Liability for	Loss of and/or Damage to Household Goods.	52.247-23
		Losses on other contracts.	31.205-23
	Equal	low bids.	19.202-3 52.219-2
		Lowest price technically acceptable source selection process.	15.101-2
	Definition:	Made	27.301 52.227-11 52.227-12
	Shipments by parcel post or other classes of	mail.	42.1404
	Solicitation	mailing lists.	14.205
	Definition:	Maintain	24.101
	Full and Open Competition After Exclusion of Sources: Establishing or	maintaining alternative sources.	6.202
	Using and	Maintaining Requirements Documents	11.2
		Maintenance and repair costs.	31.205-24

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Maintenance of standardization documents.	11.202
	Contractor's	maintenance program.	45.509-1
	Definition:	Major helium requirement	8.501 52.208-8
	Definition:	Major nonconformance	46.101
	Definition:	Major system	2.101
		Major System Acquisition	Part 34
		Major System—Minimum Rights.	52.227-22
	Additional requirements for	major systems.	7.106
	Technical Data Declaration, Revision, and Withholding of Payment—	Major Systems.	52.227-21
	Definition:	Make-or-Buy program	2.101
	Changes or Additions to	Make-or-Buy Program.	52.215-9
		Make-or-buy programs.	15.407-2
	Definition:	Management and operating contract	17.601
		Management and Operating Contracts	17.0
		Management of Government Property in the Possession of Contractors	45.5
		Management of risk.	39.102
		Management Oversight of Service Contracts	37.5
	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition	Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Contractor Use of	Mandatory Sources of Supply or Services.	52.208-9
	Selecting and Developing Requirements Documents: Items peculiar to one	manufacturer.	11.105
		Manufacturing and production engineering costs.	31.205-25
		Market acceptance.	11.103
	Definition:	Market research	2.101
		Market Research	Part 10
	Conducting	market research about financing terms.	32.202-3
	Acquisition of Commercial Items:	Market research and description of agency need.	12.202
	Definition:	Marketing consultant	9.501
	Disclosure, protection, and	marking of contractor bid or proposal information and source selection information.	3.104-4
	Government Direction and	Marking.	52.247-26
	Definition:	Master plan	19.701 52.219-9
	Definition:	Master solicitation	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Sealed Bidding:	Master solicitation.	14.203-3
	Acceptable	Material	11.3
	Definition:	Material	45.301
		Material and workmanship.	36.505 52.236-5
	Definition:	Material cost at standard	31.001
		Material costs.	31.205-26
		Material Inspection and Receiving Reports	46.6
		Material Requirements.	52.211-5
	Hazardous Material Identification and	Material Safety Data.	52.223-3
	Providing	material.	45.303
	Records of	material.	45.505-3
	Definition:	Material-price standard	31.001
	Definition:	Material-quantity standard	31.001
	Definition:	Materials	52.229-2
	Supervision, Labor, or	Materials.	52.247-12
	Solicitation provisions and contract clauses	Matrix.	52.301
	Definition:	May	2.101
	Indemnification and	Medical Liability Insurance.	52.237-7
	Agency and Public Participation: Public	meetings.	1.503
	Release of Information: Requests from	Members of Congress.	5.403
		Methods of conducting set-asides.	19.502-4
	Publicizing Contract Actions:	Methods of disseminating information.	5.101
	Acquisition	methods.	7.402
	Definition:	Mexican end product	25.003
	Definition:	Micro-purchase	2.101
	Definition:	Micro-purchase threshold	2.101
	Actions At or Below the	Micro-Purchase Threshold	13.2
	Major System—	Minimum Rights.	52.227-22
	F.o.b. Origin—	Minimum Size of Shipments.	52.247-61
	Application of the Fair Labor Standards Act	minimum wage.	22.1002-4
	SCA	Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	52.222-47
	Definition:	Minor nonconformance	46.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Minority	52.222-27
	Definition:	Minority Institution	2.101
	Definition:	Misrepresentation of fact	33.201
		Misrepresentations or violations of the Covenant Against Contingent Fees.	3.405
	Contracting by Negotiation: Preaward, Award, and Postaward Notifications, Protests, and	Mistakes	15.5
	Sealed Bidding:	Mistakes after awards.	14.407-4
	Sealed Bidding: Other	mistakes disclosed before award.	14.407-3
	Sealed Bidding:	Mistakes in bids.	14.407
	Contracting by Negotiation: Discovery of	mistakes.	15.508
	Sealed Bidding: Apparent clerical	mistakes.	14.407-2
	Definition:	Mixed invoice	32.902
	Facilities Equipment	Modernization.	52.245-16
	Definition:	Modification	52.101(a)
	Sealed Bidding:	Modification or withdrawal of bids.	14.303
	Sealed Bidding: Submission,	modification, and withdrawal of bids.	14.304
	Contracting by Negotiation: Submission,	modification, revision, and withdrawal of proposals.	15.208
	Contract	Modifications	Part 43
	Contract	Modifications (SF 30).	53.243
	Late Submissions,	Modifications, and Withdrawals of Bids.	52.214-7
	Late Submissions,	Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	52.214-23
	Types of contract	modifications.	43.103
	Price Reduction for Defective Cost or Pricing Data—	Modifications.	52.215-11
	Price Reduction for Defective Cost or Pricing Data—	Modifications—Sealed Bidding.	52.214-27
	Subcontractor Cost or Pricing Data—	Modifications—Sealed Bidding.	52.214-28
	Procedures for	modifying and completing provisions and clauses.	52.104
	Definition:	Modular contracting	39.002
		Modular contracting.	39.103
	Quantitative and	monetary control.	45.508-3
	Certified or cashier's checks, bank drafts,	money orders, or currency.	28.204-2
		Monthly and annual review.	41.401
	Definition:	Motor vehicle	8.1101
	Providing	motor vehicles.	45.304

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Moving average cost	31.001
	Accessorial Services—	Moving Contracts.	52.247-13
		Multiple Awards for Advisory and Assistance Services.	52.216-28
	Evaluation of Bids for	Multiple Awards.	52.214-22
	Single or	Multiple Awards.	52.216-27
		Multiple Payment Arrangements.	52.232-37
	Definition:	Multiple service locations	41.101
		Multiple Service Locations.	52.241-11
		Multiple Shipments.	52.247-18
	Fair Labor Standards Act and Service Contract Act—Price Adjustment	Multiple Year and Option Contracts.	52.222-43
	Definition:	Multiple year contracts	22.1001
	Incentive Contracts: Structuring	multiple-incentive contracts.	16.402-4
	Service Contract Act of 1965, As Amended:	Multiple-year contracts.	22.1008-5
	Definition:	Multi-year contract	17.103
		Multi-year Contracting	17.1
	Cancellation Under	Multi-year Contracts.	52.217-2
	Definition:	National defense	2.101
	Notice of Priority Rating for	National Defense Use.	52.211-14
	Definition:	National security system	39.002
	Other Than Full and Open Competition:	National security.	6.302-6
	The	need for further certifications.	3.103-3
	Definition:	Negative instant contract savings	48.001 52.248-1
	Patents: Clauses for	negotiated contracts (excluding construction).	27.203-4
	Patents:	Negotiated contracts (excluding construction).	27.203-3
	Notice of Cost Comparison	Negotiated.	52.207-2
		Negotiating contract type.	16.103
	Special procedures for price	negotiation in construction contracting.	36.214
	Criteria for acceptance and	negotiation of an unsolicited proposal.	15.607
		Negotiation of contract debts.	32.608
	Construction Contracts: Contracting by	negotiation.	36.520
	Contract	negotiation.	19.808
	Documenting the	negotiation.	15.406-3
	Forms: Contracting by	negotiation.	53.215
	Price	negotiation.	15.405

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Annual Representations and Certifications—	Negotiation.	52.215-7
	Audit and Records—	Negotiation.	52.215-2
	Architect-Engineer Services:	Negotiations.	36.606
	Definition:	Net acquisition savings	48.001 52.248-1
		Net Weight—General Freight.	52.247-10
		Net Weight—Household Goods or Office Furniture.	52.247-11
	Definition:	Neutral person	2.101
	Definition:	New	52.211-5
		No Evaluation of Transportation Costs.	52.247-50
	Cost-Reimbursement Contracts: Cost Contract—	No Fee.	52.216-11
	Cost-Reimbursement Contracts: Cost-Sharing Contract—	No Fee.	52.216-12
	Definition: May/	No person may	2.101
		No-cost settlement agreement—complete termination.	49.603-6
		No-cost settlement agreement—partial termination.	49.603-7
		No-cost settlement.	49.109-4
		Non-Commercial Item Purchase Financing	32.1
	Advance Payments for	Non-Commercial Items	32.4
	Nonpayment of subcontractors under contracts for	noncommercial items.	32.112
	Contract clauses for	non-commercial purchases.	32.111
	Federal, State, and Local Taxes	Noncompetitive Contract.	52.229-4
		Noncompetitive contracts.	29.401-4
	Warranty of Supplies of a	Noncomplex Nature.	52.246-17
	Bonds and Other Financial Protections:	Noncompliance with bid guarantee requirements.	28.101-4
		Noncompliance with CAS requirements.	30.602-2
	Employment of Workers with Disabilities: Actions because of	noncompliance.	22.1407
	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans: Actions because of	noncompliance.	22.1309
		Nonconforming supplies or services.	46.407
	Equal Employment Opportunity:	Nonconstruction.	22.804-1
	Definition:	Nondevelopmental item	2.101 52.202-1
		Nondiscrimination Because of Age	22.9
	Definition:	Noneligible offer	25.003
	Definition:	Noneligible product	25.003

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Non-Government use of plant equipment.	45.407
	Definition:	Nonmanufacturer rule	19.001
		Nonpayment of subcontractors under contracts for noncommercial items.	32.112
	Subcontractor assertions of	nonpayment.	32.112-1
		Nonpersonal Health Care Services	37.4
	Definition:	Nonpersonal services contract	37.101
	Definition:	Nonprocurement Common Rule	9.403
	Debarment, Suspension, and Ineligibility: List of Parties Excluded from Federal Procurement and	Nonprocurement Programs.	9.404
	Communications with the central	nonprofit agencies and the Committee.	8.714
	Acquisition from	Nonprofit Agencies Employing People Who Are Blind or Severely Disabled.	8.7
	Surveys of	nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.	9.107
	Definition:	Nonprofit agency serving people who are blind	8.701
	Definition:	Nonprofit agency serving people with other severe disabilities	8.701
	Accountable Facilities	Nonprofit Educational Institutions.	52.245-13
	Contract Purpose	Nonprofit Educational Institutions.	52.245-12
	Termination for Convenience of the Government (Educational and Other	Nonprofit Institutions).	52.249-5
	Definition:	Nonprofit organization	27.301 45.301 52.227-11 52.227-12
		Nonprofit organizations other than educational and state and local governments.	42.705-5
	Contracts for research with educational institutions and	nonprofit organizations.	35.015
	Contracts with	nonprofit organizations.	31.108 31.7
	Definition:	Nonqualified pension plan	31.001
	Late receipt or	nonreceipt of wage determination.	22.1012
	Definition:	Nonrecurring costs	17.103
	Nonrefundable,	Nonrecurring Service Charge.	52.241-12
		Nonrefundable, Nonrecurring Service Charge.	52.241-12
	Obtaining	nonreportable property.	8.104

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Nonseverable	45.301
	Definition:	Nonsponsor	35.017(b)
	Definition:	Normal cost	31.001
	Definition:	Normal workweek	22.103-1
	Use of patented technology under the	North American Free Trade Agreement.	27.208
	Determining	North American Industry Classification System (NAICS) codes and size standards.	19.303
		North Carolina State and Local Sales and Use Tax.	52.229-2
	Definition:	No-setoff commitment	32.801
	Estimated Weights or Quantities	Not Guaranteed.	52.247-8
	Commercial Bill of Lading	Notations.	52.247-1
	United States bonds or	notes.	28.204-1
	Definition:	Notice	22.1001
		Notice and Assistance Regarding Patent and Copyright Infringement.	52.227-2
	Patents: Clause on	notice and assistance.	27.202-2
		Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	52.232-14
		Notice of award.	36.213-4
		Notice of Cost Comparison (Negotiated).	52.207-2
		Notice of Cost Comparison (Sealed-Bid).	52.207-1
	Patents—	Notice of Government Licensee.	52.227-7
		Notice of intent to disallow costs.	42.801 52.242-1
		Notice of Progress Payments.	52.232-13
		Notice of Radioactive Material.	23.6 52.223-7
		Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	52.222-23
	Sealed Bidding:	Notice to bidders of rejection of all bids.	14.404-3
		Notice To Supplier.	52.213-3
		Notice to the Government of Labor Disputes.	52.222-1
	Traffic and Transportation Management: Advance	notice.	42.1406-1
	Cost Accounting Standards	Notices and Certification.	52.230-1
	Department of Labor	notices and reports.	22.1306
		Notices of subcontracting opportunities.	5.206

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Employment of Workers with Disabilities: Department of Labor	notices.	22.1404
	Contracting for Construction: Presolicitation	notices.	36.213-2
	Publicizing Contract Actions: Presolicitation	notices.	5.204
	Advance	Notification by the Government.	52.247-24
		Notification of Changes.	52.243-7
		Notification of contract changes.	43.104
		Notification of Ownership Changes.	52.215-19
		Notification of Visa Denial.	52.222-29
	Consent to Subcontracts: Consent and advance	notification requirements.	44.201
		Notification to contractors and employees.	22.1018
		Notification to interested parties under collective bargaining agreements.	22.1010
	Contractors' Purchasing Systems Reviews:	Notification.	44.305-2
	Contracting by Negotiation:	Notifications to unsuccessful offerors.	15.503
	Contracting by Negotiation: Preaward, Award, and Postaward	Notifications, Protests, and Mistakes	15.5
	Definition:	Novation agreement	2.101
	Applicability of	novation agreements.	42.1204
		Novation and Change-of-Name Agreements	42.12
		Novation and change-of-name agreements (SF 30).	53.242-1
	Special procedures for unusually hazardous or	nuclear risks.	50.403
	Data Universal Numbering System (DUNS)	Number.	52.204-6
	Data Universal	Numbering System (DUNS) Number.	52.204-6
	Protests, Disputes, and Appeals:	Obligation to continue performance.	33.213
		Obtaining forms.	53.107
		Obtaining nonreportable property.	8.104
	Environment, Energy and Water Efficiency, Renewable Energy Technologies,	Occupational Safety, and Drug-Free Workplace	Part 23
		Ocean Transportation by U.S.—Flag Vessels	47.5
	Contractor use of Government supply sources	OF 347.	53.251
	Delivery orders and orders under basic ordering agreements	OF 347.	53.216-1
	Definition:	Offer	2.101
	Evaluation,	offering, and acceptance.	19.804
	Definition:	Offeror	2.101
		Offeror Representations and Certifications—Commercial Items.	52.212-3
	Contracting by Negotiation: Award to successful	offeror.	15.504

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Representation by the	offeror.	19.301
	Procedures for	offeror-proposed commercial contract financing.	32.205
	Contracting by Negotiation: Exchanges with	offerors after receipt of proposals.	15.306
	Contracting by Negotiation: Notifications to unsuccessful	offerors.	15.503
	Contracting by Negotiation: Postaward debriefing of	offerors.	15.506
	Contracting by Negotiation: Preaward debriefing of	offerors.	15.505
	Qualifications of	offerors.	47.207-1
	Instructions to	Offerors—Commercial Items.	52.212-1
	Contracting by Negotiation: Instructions to	Offerors—Competitive Acquisition.	52.215-1
	Sealed Bidding: Submission of	Offers in the English Language.	52.214-34
	Sealed Bidding: Submission of	Offers in U.S. Currency.	52.214-35
	Buy American Act—Construction Materials: Evaluating	offers of foreign construction material.	25.204
	Streamlined evaluation of	offers.	12.602
	Transportation factors in the evaluation of	offers.	47.306
		Offers.	12.205
	Estimated Quantities or Weights for Evaluation of	Offers.	52.247-20
	Evaluation of Export	Offers.	52.247-51
	Shipping Point(s) Used in Evaluation of F.o.b. Origin	Offers.	52.247-46
	Definition:	Office furniture	47.201
	Net Weight—Household Goods or	Office Furniture.	52.247-11
	Definition:	Officer or employee of an agency	3.801 52.203-12(a)
	Materials Management Acquisition Regulations System: Contracting	officers.	1.602
	Definition:	Official	3.104-1
	Definition:	Off-the-shelf item	46.101
	Optional forms	OF's.	53.302
	Only	one responsible source and no other supplies or services will satisfy agency requirements.	6.302-1
	Full and	Open Competition	6.1
	Sealed Bidding:	Opening of Bids and Award of Contract	14.4
	Sealed Bidding:	Opening of bids.	14.402
	Sealed Bidding: Cancellation of invitations after	opening.	14.404-1
	Sealed Bidding: Postponement of	openings.	14.402-3
	Definition:	Operation of a system of records	24.101 52.224-2(c)(1)

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Government-Furnished Equipment With or Without	Operators.	52.247-25
	Definition:	Option	2.101
	Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and	Option Contracts).	52.222-43
		Option for Increased Quantity.	52.217-6
		Option for Increased Quantity—Separately Priced Line Item.	52.217-7
		Option to Extend Services.	52.217-8
		Option to Extend the Term of the Contract.	52.217-9
		Option to Purchase Equipment.	52.207-5
		Optional acquisition of supplies and services.	8.713
		Optional forms (OF's).	53.302
		Options	17.2
	Evaluation of	Options Exercised at Time of Contract Award.	52.217-4
		Options in shipment and delivery.	47.305-11
	Contract modifications	options, extensions, changes in scope and anniversary dates.	22.1008-6
	Exercise of	options.	17.207
	Use of	options.	17.202
	Evaluation Exclusive of	Options.	52.217-3
	Evaluation of	Options.	52.217-5
	Contract not Affected by	Oral Agreement.	52.247-27
	Contracting by Negotiation:	Oral presentations.	15.102
		Order Limitations.	52.216-19
		Order of precedence for requirements documents.	11.101
	Contracting by Negotiation:	Order of Precedence—Uniform Contract Format.	52.215-8
		Order of Precedence—Utilities.	52.241-2
	Federal Supply Schedules:	Order placement.	8.405-2
	Stop-Work	Order.	52.242-15
		Ordering from Government supply sources.	51.103
	Definition:	Ordering office	8.701
	Federal Supply Schedules:	Ordering office responsibilities.	8.405
		Ordering procedures.	8.604 17.504
	Indefinite-Delivery Contracts:	Ordering.	16.505 52.216-18
	Delivery	orders and orders under basic ordering agreements (OF 347).	53.216-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Preparation and execution of	orders.	13.403
		Organization and direction of the work.	36.519 52.236-19
		Organization costs.	31.205-27
		Organizational and Consultant Conflicts of Interest	9.5
	Definition:	Organizational conflict of interest	2.101
	F.o.b.	Origin and/or F.o.b. Destination Evaluation.	52.247-45
	F.o.b.	Origin, Contractor's Facility.	52.247-30
	F.o.b.	Origin, Freight Allowed.	52.247-31
	F.o.b.	Origin, Freight Prepaid.	52.247-32
	F.o.b.	Origin, Prepaid Freight—Small Package Shipments.	52.247-65
	F.o.b.	Origin, with Differentials.	52.247-33
	Evaluation—F.o.b.	Origin.	52.247-47
	F.o.b.	Origin.	52.247-29
	Definition:	Original complement of low cost equipment	31.001
	F.o.b.	Origin—Carload and Truckload Shipments.	52.247-59
	F.o.b.	Origin—Government Bills of Lading or Indicia Mail.	52.242-11
	F.o.b.	Origin—Government Bills of Lading or Prepaid Postage.	52.242-10
	F.o.b.	Origin—Minimum Size of Shipments.	52.247-61
	Use of	other Government supply sources.	8.002
		Other Improper Business Practices	3.5
		Other International Agreements and Coordination	25.8
	Sureties and	Other Security for Bonds	28.2
		Other Socioeconomic Programs	Part 26
	Performance and Payment Bonds—	Other Than Construction.	52.228-16
	Competition Requirements:	Other Than Full and Open Competition	6.3
	Competition Requirements: Circumstances permitting	other than full and open competition.	6.302
	Definition:	Other work	49.001
	Subcontractors and	Outside Associates and Consultants (Architect-Engineer Services).	52.244-4
		Overprinting.	53.104
		Overseas workers' compensation and war hazard insurance.	28.305
	Work	oversight in architect-engineer contracts.	36.609-3
	Work	Oversight in Cost-Reimbursement Construction Contracts.	52.236-18
	Management	Oversight of Service Contracts	37.5
	Definition:	Overtime	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contract Work Hours and Safety Standards Act—	Overtime Compensation.	52.222-4
	Liquidated damages and	overtime pay.	22.302
	Definition:	Overtime premium	2.101
	Payment for	Overtime Premiums.	52.222-2
	Service Contracting: Uncompensated	overtime.	37.115
	Wages, fringe benefits, and	overtime.	22.406-2
	Basic Labor Policies:	Overtime.	22.103
	Identification of Uncompensated	Overtime.	52.237-10
	Definition:	Ozone-depleting substance	2.101 52.223-11
		Ozone-Depleting Substances.	23.8 52.223-11
	Publicizing Contract Actions:	Paid Advertisements.	5.5 53.205-1
		Paper Documents	4.3
		Parcel post eligible shipments.	42.1404-1
	Shipments by	parcel post or other classes of mail.	42.1404
		Partial payments.	49.112-1 49.602-4
		Partial set-asides.	19.502-3
		Partial settlements.	49.109-5
	Definition:	Partial termination	49.001
	Equitable adjustment after	partial termination.	49.208
	Procedure for	partial termination.	49.304
	Stopping in Transit for	Partial Unloading.	52.247-19
	Definition:	Participating personally and substantially in a Federal agency procurement	3.104-1
	Acquisition of Commercial Items: Use of	past performance.	12.206
	Notice and Assistance Regarding	Patent and Copyright Infringement.	52.227-2
	Filing of	Patent Applications—Classified Subject Matter.	52.227-10
		Patent costs.	31.205-30
	Definition:	Patent defect	46.101
		Patent indemnification of Government by contractor.	27.203
		Patent Indemnity.	52.227-3
		Patent Indemnity—Construction Contracts.	52.227-4
	Administration of	patent rights clauses.	27.305

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Patent rights follow-up.	27.305-1
	Licensing background	patent rights to third parties.	27.306
		Patent Rights Under Government Contracts	27.3
	Research and Development Contracting:	Patent rights.	35.012
		Patent Rights—Acquisition by the Government.	52.227-13
		Patent Rights—Retention by the Contractor (Long Form).	52.227-12
		Patent Rights—Retention by the Contractor (Short Form).	52.227-11
		Patents	27.2
		Patents, Data, and Copyrights	Part 27
	Royalties and other costs for use of	patents.	31.205-37
		Patents—notice of Government as a licensee.	27.204-3 52.227-7
	Construction contracts	pay administration records	4.705-2
	Definition:	Pay-as-you-go cost method	31.001
	Closeout of	paying office contract files.	4.804-3
	Multiple	Payment Arrangements.	52.232-37
		Payment bonds.	28.103-3
		Payment by Contractor to Government.	52.237-5
	Incremental	Payment by Contractor to Government.	52.237-6
		Payment by Electronic Funds Transfer—Central Contractor Registration	52.232-33
		Payment by Electronic Funds Transfer—Other Than Central Contractor Registration	52.232-34
	Service Contracting:	Payment by Government to Contractor.	52.237-4
		Payment by Governmentwide commercial purchase card.	32.1108
		Payment by Third Party.	52.232-36
	Definition:	Payment date	32.902
	Prompt Payment: Determining	payment due dates.	32.904
		Payment for Overtime Premiums.	52.222-2
		Payment for shipments.	51.105
	Definition:	Payment information	32.1102
	Reporting	payment information to the IRS.	4.904
		Payment information.	32.1107
	Administration and	payment of commercial financing payments.	32.207
	Demand for	payment of contract debt.	32.610

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Limitations on the Administration and	Payment of Funds to Influence Federal Transactions	3.8
		payment of performance-based payments.	32.1007
		Payment of subcontractors under cost-reimbursement prime contracts.	32.110
	Fast Alternative	Payment Procedure	13.4
	Bonds and Other Financial Protections:	Payment Protections.	52.228-13
		Payment to subcontractors or suppliers.	28.106-8
		Payment under Communication Service Contracts with Common Carriers.	52.232-6
	Interagency Acquisitions Under the Economy Act:	Payment.	17.505
	Termination of Contracts:	Payment.	49.112
	Types of	payments for commercial item purchases.	32.202-2
	Installment	Payments for Commercial Items.	52.232-30
		Payments of Allowable Costs Before Definitization.	52.216-26
	Restriction on Severance	Payments to Foreign Nationals.	52.237-8
	Waiver of Limitation on Severance	Payments to Foreign Nationals.	52.237-9
		Payments under Fixed-Price Architect-Engineer Contracts.	52.232-10
		Payments under Fixed-Price Construction Contracts.	52.232-5
		Payments under Fixed-Price Research and Development Contracts.	52.232-2
		Payments under Personal Services Contracts.	52.232-3
		Payments under Time-and-Materials and Labor-Hour Contracts.	52.232-7
		Payments under Transportation Contracts and Transportation-Related Services Contracts.	52.232-4
	Suspension of	payments, termination of contract, and debarment and suspension actions.	23.506
	Administration and payment of commercial financing	payments.	32.207
	Bonds and Other Financial Protections: Withholding contract	payments.	28.106-7
	Suspension or reduction of	payments.	32.503-6
	Advance	Payments.	52.232-12
	Dismantling, Demolition, or Removal of Improvements:	Payments.	37.303 52.232-1
	Limitation on Withholding of	Payments.	52.232-9
	Performance-Based	Payments.	52.232-32
	Vehicle Lease	Payments.	52.208-4
		Payrolls and Basic Records.	52.222-8

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Payrolls and statements.	22.406-6
	Definition:	Penal sum or penal amount	28.001
		Penalties for Unallowable Costs.	52.242-3
	Criminal and civil	penalties, and further administrative remedies.	3.104-8
	Fines,	penalties, and mischarging costs.	31.205-15
	Civil	penalties.	3.807
	Definition:	Penalty	31.205-47(a)
	Assessing the	penalty.	42.709-3
	Waiver of the	penalty.	42.709-5
		Pension Adjustments and Asset Reversions.	52.215-15
	Definition:	Pension plan	31.001
	Definition:	Pension plan participant	31.001
	Capability to	Perform a Contract for the Relocation of a Federal Office.	52.247-3
	Contractor Versus Government	Performance	7.3
		Performance and payment bonds and alternative payment protections for construction contracts.	28.102
		Performance and payment bonds for other than construction contracts.	28.103
		Performance and Payment Bonds—Construction.	52.228-15
		Performance and Payment Bonds—Other Than Construction.	52.228-16
		Performance bonds.	28.103-2
	Architect-Engineer Services:	Performance evaluation.	36.604
	Incentive Contracts:	Performance incentives.	16.402-2
	Concurrent	performance of firm-fixed-price and other types of construction contracts.	36.208
		Performance of Work by the Contractor.	52.236-1
	Delivery or	Performance Schedules	11.4
	Warranty of Systems and Equipment under	Performance Specifications or Design Criteria.	52.246-19
	Guiding Principles for the Materials Management Acquisition System:	Performance standards.	1.102-2
	Federal Supply Schedules: Delinquent	performance.	8.405-4
	Obligation to continue	performance.	33.213
	Definition:	Performance-based contracting	2.101
		Performance-Based Contracting	37.6
	Elements of	performance-based contracting.	37.602
	Administration and payment of	performance-based payments.	32.1007

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Bases for	performance-based payments.	32.1002
	Suspension or reduction of	performance-based payments.	32.1008
		Performance-Based Payments.	52.232-32
	Invitation to Propose	Performance-Based Payments.	52.232-28
		Permits and responsibilities.	36.507 52.236-7
		Permits, Authorities, or Franchises.	52.247-2
	Definition:	Person	3.502-1 3.801 52.203-7(a) 52.203-12(a)
	Contractor Liability for	Personal Injury and/or Property Damage.	52.247-21
	Definition:	Personal property	45.601
	Excess	Personal Property	8.1
	Information on available excess	personal property.	8.103
	Definition:	Personal services contract	2.101
		Personal services contracts.	37.104
	Payments under	Personal Services Contracts.	52.232-3
	Compensation for	personal services.	31.205-6
	Termination—	Personal Services.	52.249-12
	Two-Phase Design-Build Selection Procedures:	Phase one.	36.303-1
	Two-Phase Design-Build Selection Procedures:	Phase two.	36.303-2
		Physical data.	36.504 52.236-4
		Physical inventories.	45.508
		Physically completed contracts.	4.804-4
	Ex Dock,	Pier, or Warehouse, Port of Importation.	52.247-40
		Place of acceptance.	46.503
		Place of delivery—f.o.b. point.	47.302
	Service Contract Act of 1965, As Amended: Procedures when	place of performance is unknown.	22.1008-4
	Service Contract Act of 1965, As Amended:	Place of performance unknown.	22.1009
	Service Contract Act—	Place of Performance Unknown.	52.222-49
		Place of Performance—Sealed Bidding.	52.214-14
	All possible	places of performance identified.	22.1009-3
	All possible	places of performance not identified.	22.1009-4
	Attempt to identify possible	places of performance.	22.1009-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Planner	7.101
	Acquisition	Planning	Part 7
		Planning for the Purchase of Supplies in Economic Quantities	7.2
	Definition:	Plans and specifications	36.102
	Definition:	Plant clearance	45.601
	Definition:	Plant clearance officer	45.601
	Definition:	Plant clearance period	45.601
	Definition:	Plant equipment	45.101
		Plant protection costs.	31.205-29
		Plant reconversion costs.	31.205-31
		Pledges of Assets.	52.228-11
	F.o.b.	Point for Delivery of Government-Furnished Property.	52.247-55
	F.o.b. Designated Air Carrier's Terminal,	Point of Exportation.	52.247-43
	F.o.b. Inland Carrier,	Point of Exportation.	52.247-38
	F.o.b. Designated Air Carrier's Terminal,	Point of Importation.	52.247-44
	F.o.b. Inland	Point, Country of Importation.	52.247-39
	Unsolicited Proposals: Agency	points of contact.	15.604
	Subcontracting	Policies and Procedures	Part 44
		Policy requirements.	44.402
	Lobbying and	political activity costs.	31.205-22
	Definition:	Pollution prevention	2.101
		Pollution Prevention and Right-to-Know Information.	52.223-5
	Federal Compliance with Right-to-Know Laws and	Pollution Prevention Requirements	23.10
	Definition:	Pool	9.701
	Contracting with individual	pool members.	9.703
	Contractor Qualifications: Defense Production	Pools and Research and Development Pools	9.7
	Contracting with	pools.	9.702
	Ex Dock, Pier, or Warehouse,	Port of Importation.	52.247-40
	F.a.s. Vessel,	Port of Shipment.	52.247-36
	F.o.b. Vessel,	Port of Shipment.	52.247-37
	Definition:	Positions that will be filled from within the Contractor's organization	52.222-35
	Use and	Possession Prior to Completion.	52.236-11
	Definition:	Possessions	2.101
	Violations or	possible violations.	3.104-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Postaward conference arrangements.	42.503-1
		Postaward conference procedure.	42.503-2
		Postaward conference report.	42.503-3
		Postaward conferences.	42.503
	Contracting by Negotiation:	Postaward debriefing of offerors.	15.506
	Buy American Act—Construction Materials:	Postaward determinations.	25.205
		Postaward letters.	42.504
		Postaward matters.	32.503
	Contracting by Negotiation: Preaward, Award, and	Postaward Notifications, Protests, and Mistakes	15.5
		Postaward Orientation	42.5
	Selecting contracts for	postaward orientation.	42.502
		Postaward responsibilities of the contracting officer.	19.705-6
		Postaward subcontractor conferences.	42.505
		Postaward utilization requests.	45.203
	Definition:	Postconsumer material	11.301
	Synopsis and	posting requirements.	13.105
	Sealed Bidding:	Postponement of openings.	14.402-3
	Definition:	Power of attorney	2.101
	Definition:	Practical application	27.301 52.227-11 52.227-12 52.227-13
	Cost Accounting Standards	Preambles and Regulations.	Appendix
		Preaward considerations.	19.809
	Contracting by Negotiation:	Preaward debriefing of offerors.	15.505
	Buy American Act—Construction Materials:	Preaward determinations.	25.203
	Responsible Prospective Contractors: Disclosure of	preaward information.	9.105-3
	Testing:	Preaward in-use evaluation.	11.801
		Preaward matters.	32.502
		Preaward On-Site Equal Opportunity Compliance Evaluation.	52.222-24
	Definition:	Preaward survey	2.101
	Responsible Prospective Contractors:	Preaward surveys.	9.106
	Contracting by Negotiation:	Preaward, Award, and Postaward Notifications, Protests, and Mistakes	15.5
	Sealed Bidding:	Pre-bid conference.	14.207

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Order of	precedence for requirements documents.	11.101
	Definition:	Precious metals	45.601
	Recovering	precious metals.	45.607-2
		Preconstruction conference.	36.522 52.236-26
		Preconstruction orientation.	36.212
		Precontract costs.	31.205-32
		Predetermined Indirect Cost Rates.	52.216-15
	Incentive Contracts: Application of	predetermined, formula-type incentives.	16.402
		Preference for Privately Owned U.S.-Flag Commercial Vessels.	52.247-64
		Preference for U.S.-Flag Air Carriers.	52.247-63
	Order of	preference.	32.106
		Prerenegotiation objectives.	15.406-1
	F.o.b. Origin,	Prepaid Freight—Small Package Shipments.	52.247-65
	F.o.b. Origin—Government Bills of Lading or	Prepaid Postage.	52.242-10
	Synopses of Contract Awards:	Preparation and transmittal of synopses of awards.	5.302
	Synopses of Proposed Contract Actions:	Preparation and transmittal of synopses.	5.207
		Preparation of solicitations and contracts.	47.206
	Definition:	Preponderance of the evidence	2.101
		Prescription of Forms	53.2
	Special Aspects of Contracting for Construction:	Presolicitation notices.	36.213-2
	Synopses of Proposed Contract Actions:	Presolicitation notices.	5.204
		Presolicitation planning.	47.202
	Leasing of Motor Vehicles:	Presolicitation requirements.	8.1102
	Pollution	Prevention and Right-to-Know Information.	52.223-5
	Definition:	Price	15.401
	Fair Labor Standards Act and Service Contract Act—	Price Adjustment (Multiple Year and Option Contracts).	52.222-43
	Fair Labor Standards Act and Service Contract Act—	Price Adjustment.	52.222-44
	Special procedures for	price negotiation in construction contracting.	36.214
		Price negotiation.	15.405
		Price or Fee Adjustment for Illegal or Improper Activity.	52.203-10
	Use of standing	price quotations.	13.103
	Determination of	price reasonableness.	12.209
	Fixed-ceiling-price contracts with retroactive	price redetermination.	16.206
	Fixed-price contracts with prospective	price redetermination.	16.205

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Cost-Reimbursement Contracts:	Price Redetermination—Prospective.	52.216-5
	Cost-Reimbursement Contracts:	Price Redetermination—Retroactive.	52.216-6
		Price Reduction for Defective Cost or Pricing Data—Modifications.	52.215-11
		Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	52.214-27
	Progress Payments Based on Costs: Adjustments for Sealed Bidding:	price reduction.	32.503-11
	Responsible bidder—reasonableness of Changes—Fixed-Definition:	Price related factors.	14.201-8
	Memorandum of Special cost or	price.	14.408-2
	Subcontract	Price.	52.243-1
	Prohibition on obtaining cost or Requiring cost or	Pricing	2.101
	Other circumstances where cost or	pricing agreement with refund.	32.609
	Instructions for submission of cost or	pricing areas.	15.407
	Defective cost or	Pricing aspects of fixed-price incentive contract warranties.	46.707
	Obtaining cost or	pricing considerations.	15.404-3
	Requiring information other than cost or	pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).	15.403-1
	Certificate of Current Cost or	pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).	15.403-4
	Table 15-2—Instructions for Submitting Cost or	pricing data are not required.	15.403-2
	Records of	pricing data or information other than cost or pricing data.	15.403-5
	Forward	pricing data.	15.407-1
	Independent	pricing data.	15.403
	Definition:	pricing data.	15.403-3
	Definition:	pricing data.	15.406-2
	Audit of	Pricing Data.	15.408
	Definition:	Pricing Data.	15.408
		Pricing fixed-price construction contracts.	36.207
		pricing information.	45.505-2
		Pricing policy.	15.402
		pricing rate agreements.	15.407-3 42.17
		pricing.	3.103
		Primary sponsor	35.017(b)
		Prime contract	3.502-1 52.203-7
		prime contract settlement proposals and subcontract settlements.	49.107
		Prime contractor	3.502-1 22.801 52.203-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Duties of	prime contractor after receipt of notice of termination.	49.104
	Definition:	Prime contractor employee	3.502-1 52.203-7
		Prime contractor's rights and obligations.	49.108-2
	Subcontracts under	prime contracts providing progress payments.	32.504
	Application of	principles and procedures.	31.204
	Statement of guiding	principles for the Materials Management Acquisition System.	1.102
		Printed or Copied Double-Sided on Recycled Paper.	52.204-4
	Definition:	Printed/copied double-sided	4.301
	Acquisition of	Printing and Related Supplies	8.8
	Special construction and	printing.	53.106
		Priorities and Allocations	11.6
		Priorities for use of Government supply sources.	8.001
	Notice of	Priority Rating for National Defense Use.	52.211-14
	Protection of	Privacy and Freedom of Information	Part 24
		Privacy or Security Safeguards.	52.239-1
		Privacy.	39.105
	Determining availability of	private commercial sources.	7.303
	Definition:	Privately owned U.S.-flag commercial vessel	47.501
	Preference for	Privately Owned U.S.-Flag Commercial Vessels.	52.247-64
		Privileged and confidential information.	30.202-4
		Procedure after discontinuing vouchers.	49.303
	Special	procedure for cost-reimbursement contracts for construction.	36.215
	Contract Cost Principles and	Procedures	Part 31
	Simplified Acquisition:	Procedures	13.1
	Subcontracting Policies and	Procedures	Part 44
		Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.	22.1503
		Procedures for closing out contract files.	4.804-5
		Procedures for filing complaints.	3.904
		Procedures for investigating complaints.	3.905
	Special	procedures for price negotiation in construction contracting.	36.214
	Special	procedures for sealed bidding in construction contracting.	36.213
	Acquisition of Commercial Items:	Procedures for solicitation, evaluation, and award.	12.203

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Acquisition Planning: General	procedures.	7.104
	Agency Acquisition Regulations: Agency control and compliance	procedures.	1.304
	Application of principles and	procedures.	31.204
	Contracting by Negotiation: Agency	procedures.	15.606
	First Article Testing and Approval: Government administration	procedures.	9.307
	Full and Open Competition: Use of competitive	procedures.	6.102
	Interagency Acquisitions Under the Economy Act: Ordering	procedures.	17.504
	Publicizing Contract Actions: Release	procedures.	5.404-1
	Definition:	Proceeding	31.205-47(a)
		Proceeds of sale.	45.610-3
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled: Allocation	process.	8.705-3
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled: Direct-order	process.	8.705-2
	Novation and Change-of-Name Agreements:	Processing agreements.	42.1203
		Processing cases.	50.305
		Processing suspected violations.	3.806
		Processing value engineering change proposals.	48.103
	Definition:	Procurement	2.101
	Federal	Procurement Data System.	4.602
		Procurement integrity.	3.104
	Definition:	Procurement List	8.701
		Procurement List.	8.703
	Definition:	Procuring activity	2.101
		Production Progress Reports.	52.242-2
		Production Surveillance and Reporting	42.11
	Qualified	products.	14.210
		Professional and consultant service costs.	31.205-33
	Definition:	Professional employee	22.1102
		Professional Employee Compensation	22.11
	Evaluation of Compensation for	Professional Employees.	52.222-46
	Definition:	Profit center	31.001
		Profit.	15.404-4 49.202
	Make-or-buy	programs.	15.407-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Small business	programs.	53.219
	Customary	progress payment rates.	32.501-1
	Approval of	progress payment requests.	32.503-4
	Initiation of	progress payments and review of accounting system.	32.503-3
		Progress Payments Based on Costs	32.5
		Progress Payments Not Included.	52.232-15
		Progress payments under construction contracts.	32.103
	Administration of	progress payments.	32.503-5
	Subcontracts under prime contracts providing	progress payments.	32.504
	Supervision of	progress payments.	32.503-2
	Unusual	progress payments.	32.501-2
	Use of customary	progress payments.	32.502-1
		Progress Payments.	52.232-16
	Notice of	Progress Payments.	52.232-13
	Production	Progress Reports.	52.242-2
		Prohibited Sources	25.7
		Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor	22.15
		Prohibition of Assignment of Claims.	52.232-24
		Prohibition of Segregated Facilities.	52.222-21
	Ethics advisory opinions regarding	prohibitions on a former official's acceptance of compensation from a contractor.	3.104-6
	Statutory and related	prohibitions, restrictions, and requirements.	3.104-3
	Unsolicited Proposals:	Prohibitions.	15.608
	Definition:	Projected average loss	2.101
	Definition:	Projected benefit cost method	31.001
	Sealed Bidding:	Prompt payment discounts.	14.408-3
		Prompt Payment for Construction Contracts.	52.232-27
		Prompt Payment for Fixed-Price Architect-Engineer Contracts.	52.232-26
		Prompt Payment.	32.9
	Discounts for	Prompt Payment.	52.232-8
	Definition:	Proper invoice	2.101
	Definition:	Property	45.101
	Excess Personal	Property	8.1
	Government	Property	Part 45

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Government	Property (Consolidated Facilities).	52.245-7
	Government	Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).	52.245-5
	Liability for Government	Property (Demolition Services Contracts).	52.245-6
	Government	Property (Facilities Acquisition).	52.245-10
	Government	Property (Facilities Use).	52.245-11
	Government	Property (Fixed-Price Contracts).	52.245-2
	Government-Furnished	Property (Short Form).	52.245-4
	Definition:	Property administrator	45.501
	Research and Development Contracting: Government	property and title.	35.014
	Contractor Liability for Personal Injury and/or	Property Damage.	52.247-21
		Property disposal determinations.	45.613
	Government	Property Furnished "As Is."	52.245-19
		Property in possession of subcontractors.	45.510
		Property Records.	52.245-1
	Forms: Government	property.	53.245
	Information on available excess personal	property.	8.103
	Insurance against loss of or damage to Government	property.	28.303
	Obtaining nonreportable	property.	8.104
	Responsibility and liability for Government	property.	45.103
	F.o.b. Point for Delivery of Government-Furnished	Property.	52.247-55
	Identification of Government-Furnished	Property.	52.245-3
	Definition:	Proposal	31.001 52.242-3
		Proposal analysis techniques.	15.404-1
	Information to support	proposal analysis.	15.404-2
	Contracting by Negotiation:	Proposal analysis.	15.404
		Proposal evaluation.	15.305
	Termination settlement	proposal forms.	49.602-1
	Disclosure, protection, and marking of contractor bid or	proposal information and source selection information.	3.104-4
	Definition:	Proposal modification	15.001 52.215-1
	Definition:	Proposal revision	15.001 52.215-1
	Contracting by Negotiation:	Proposal revisions.	15.307

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Criteria for acceptance and negotiation of an unsolicited	proposal.	15.607
	Unsolicited	Proposals	15.6
	Solicitation and Receipt of	Proposals and Information	15.2
	Handling	proposals and information.	15.207
	Content of unsolicited	proposals.	15.605
	Contracting by Negotiation: Requests for	proposals.	15.203
	Delay in settling subcontractor settlement	proposals.	49.108-6
	Exchanges with industry before receipt of	proposals.	15.201
	Exchanges with offerors after receipt of	proposals.	15.306
	Rights to technical data in successful	proposals.	27.407
	Sealed bidding and competitive	proposals.	6.401
	Submission, modification, revision, and withdrawal of	proposals.	15.208
	Two-Step Sealed Bidding: Multiple Technical	Proposals.	52.214-24
	Solicitation and receipt of	proposals.	53.215-1
	Preparation of	Proposals—Construction.	52.236-28
	Synopses of	Proposed Contract Actions	5.2
	Certification regarding debarment, suspension,	proposed debarment, and other responsibility matters.	52.209-5
	Agency and Public Participation in Rule Making: Unsolicited	proposed revisions.	1.502
	Contractor Qualifications: Obtaining access to	proprietary information.	9.505-4
	Forms: Responsible	prospective contractors.	53.209-1
		Prospective Subcontractor Requests for Bonds.	52.228-12
	Fixed Price Contracts: Price Redetermination—	Prospective.	52.216-5
		Protection of existing vegetation, structures, equipment, utilities, and improvements.	36.509 52.236-9
		Protection of Government Buildings, Equipment, and Vegetation.	52.237-2
		Protection of Privacy and Freedom of Information	Part 24
	Disclosure,	protection, and marking of contractor bid or proposal information and source selection information.	3.104-4
	Whistleblower	Protections for Contractor Employees	3.9
	Definition:	Protest	33.101
		Protest after Award.	52.233-3
	Service of	Protest.	52.233-2
		Protests	33.1
	Contracting by Negotiation:	Protests against award.	15.507
	Sealed Bidding:	Protests against award.	14.408-8

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Protests to GAO.	33.104
		Protests to the agency.	33.103
	Contracting by Negotiation: Preaward, Award, and Postaward Notifications,	Protests, and Mistakes	15.5
		Protests, Disputes, and Appeals	Part 33
		Providing agency-peculiar property.	45.310
		Providing evaluation services.	9.505-3
		Providing existing special tooling.	45.306-1
		Providing Government production and research property "as is."	45.308
		Providing Government production and research property under special restrictions.	45.309
		Providing Government property by transfer.	45.311
		Providing Government Property to Contractors	45.3
		Providing material.	45.303
		Providing motor vehicles.	45.304
		Providing special test equipment.	45.307
		Providing special tooling.	45.306
		Providing systems engineering and technical direction.	9.505-1
		Provision and Clause Matrix	52.3
	Tailoring of	provisions and clauses for the acquisition of commercial items.	12.302
		Provisions and clauses prescribed in Subpart 52.1.	52.107
	Identification of	provisions and clauses.	52.103
	Incorporating	provisions and clauses.	52.102
	Solicitation	Provisions and Contract Clauses	Part 52
	Solicitation	provisions and contract clauses for the acquisition of commercial items.	12.301
	Solicitation	Provisions Incorporated by Reference.	52.252-1
	Other data rights	provisions.	27.405
	Authorized Deviations in	Provisions.	52.252-5
	Service	Provisions.	52.241-6
	Applying	Pub. L. 85-804 to advance payments under sealed bid contracts.	32.405
	Definition:	Public body	45.601
	Definition:	Public building, or public work	22.401
	Agency and Public Participation in Rule Making: Opportunity for	public comments.	1.501-2
	Other Than Full and Open Competition:	Public interest.	6.302-7
	Indemnification Under	Public Law 85-804.	52.250-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Vehicular and General	Public Liability Insurance.	52.228-10
		Public relations and advertising costs.	31.205-1
	Release of Information: General	public.	5.402
	Definition:	Publication	5.501
	Materials Management Acquisition Regulations System:	Publication and code arrangement.	1.105-1
	Agency Acquisition Regulations:	Publication and codification.	1.303
	Publicizing Contract Actions:	Publicizing and response time.	5.203
		Publicizing contract actions.	Part 5 53.205
	Acquisition Planning: Equipment Lease or	Purchase	7.4
	Simplified Acquisition Methods: Blanket	purchase agreements (BPAs).	13.303
	Simplified Acquisition Methods: Governmentwide commercial	purchase card.	13.301
	Payment by Governmentwide commercial	purchase card.	32.1108
	Describing Agency Needs:	Purchase descriptions for service contracts.	11.106
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Purchase Exceptions.	8.706
	Actions At or Below the Micro-Purchase Threshold:	Purchase guidelines.	13.202
	Planning for the	Purchase of Supplies in Economic Quantities	7.2
		Purchase or retention at cost.	45.605-1
	Restrictions on	purchase or retention of contractor inventory.	45.604
	Definition:	Purchase order	2.101
	Simplified Acquisition Methods: SF 44,	Purchase Order—Invoice—Voucher.	13.306
	Simplified Acquisition Methods: Obtaining contractor acceptance and modifying	purchase orders.	13.302-3
	Simplified Acquisition Methods: Termination or cancellation of	purchase orders.	13.302-4
	Simplified Acquisition Methods: Unpriced	purchase orders.	13.302-2
	Simplified Acquisition Methods:	Purchase orders.	13.302
	Acquisition from Federal Prison Industries, Inc.:	Purchase priorities.	8.603
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Purchase priorities.	8.704
	Economic	purchase quantities (supplies).	14.212
	Terms for Financing of	Purchases of Commercial Items.	52.232-29
	Materials Management Acquisition Regulations System:	Purpose, Authority, Issuance	1.1
	Qualifications Requirements:	QPL's, QML's, and QBL's.	9.203
	Opportunity for	qualification before award.	9.205

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Qualification requirement	2.101
	Definition:	Qualification requirement	52.209-1
	Responsibilities for establishment of a	qualification requirement.	9.204
	Acquisitions subject to	qualification requirements.	9.206
	Changes in status regarding	qualification requirements.	9.207
	Text of Provisions and Clauses:	Qualification Requirements.	52.209-1
	Testing,	Qualification, and Use of Industrial Resources Developed Under Title III, Defense Production Act	34.1
	Major System Acquisition: Testing and	qualification.	34.103
		Qualifications of offerors.	47.207-1
		Qualifications Requirements	9.2
	Collecting data on and appraising firms'	qualifications.	36.603
	Sealed Bidding: All or none	qualifications.	14.404-5
	Contractor	Qualifications.	Part 9 53.209
	Definition:	Qualified bidders list (QBL)	9.201
	Definition:	Qualified manufacturers list (QML)	9.201
	Definition:	Qualified pension plan	31.001
	Definition:	Qualified products list (QPL)	2.101
	Sealed Bidding:	Qualified products.	14.210
	Government Contract	Quality Assurance	46.4
	Government contract	quality assurance at destination.	46.403
	Government contract	quality assurance at source.	46.402
	Government contract	quality assurance for acquisitions at or below the simplified acquisition threshold.	46.404
	Acquisition of Commercial Items: Contract	quality assurance.	12.208
	Performance-Based Contracting:	Quality assurance.	37.602-2
		Quality Assurance.	Part 46
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Quality complaints.	8.711
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Quality of merchandise.	8.710
	Higher-level contract	quality requirement.	46.311 52.246-11
	Contract	Quality Requirements	46.2
	Criteria for use of contract	quality requirements.	46.203

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Higher-level contract	quality requirements.	46.202-4
	Types of contract	quality requirements.	46.202
		Quantitative and monetary control.	45.508-3
	Estimated Weights or	Quantities Not Guaranteed.	52.247-8
	Estimated	Quantities or Weights for Evaluation of Offers.	52.247-20
	Specific	Quantities Unknown.	52.247-62
		Quantity analysis, direct delivery, and reduction of crosshauling and backhauling.	47.305-7
		Quantity surveys.	36.516 52.236-16
	Text of Provisions and Clauses: Variation in	Quantity.	52.211-16
		Quick-closeout procedure.	42.708
	Soliciting competition, evaluation of	quotations or offers, award and documentation.	13.106
	Legal effect of	quotations.	13.004
	Notice of	Radioactive Material.	23.6 52.223-7
	Forward Pricing	Rate Agreements	42.17
		Rate changes and regulatory intervention.	41.402
	Definition:	Rated order	11.601
	Definition:	Rates	41.101
		Rates and charges.	47.207-6
	Cost-sharing	rates and limitations on indirect cost rates.	42.707
	Statement of equivalent	rates for Federal hires.	22.1016 52.222-42
	Change in	Rates or Terms and Conditions of Service for Regulated Services.	52.241-7
	Change in	Rates or Terms and Conditions of Service for Unregulated Services.	52.241-8
	Billing	rates.	42.704
	Final indirect cost	rates.	42.705
	Approval of Wage	Rates.	52.222-16
	Definition:	Ratification	1.602-3(a)
	Contracting Authority:	Ratification of unauthorized commitments.	1.602-3
	Definition:	Real property	45.101
	Acceptance of	real property.	28.203-3
	Records of	real property.	45.505-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Reasonable compensation	3.801 52.203-12
	Definition:	Reasonable payment	3.801 52.203-12
	Determining	reasonableness.	31.201-3
	Unsolicited proposals:	Receipt and initial review.	15.606-1
	Sealed Bidding:	Receipt and safeguarding of bids.	14.401
	Designation of Office for Government	Receipt of Electronic Funds Transfer Information.	52.232-35
	Contracting by Negotiation: Solicitation and	Receipt of Proposals and Information	15.2
	Contracting by Negotiation: Exchanges with industry before	receipt of proposals.	15.201
	Contracting by Negotiation: Exchanges with offerors after	receipt of proposals.	15.306
	Prescription of Forms: Solicitation and	receipt of proposals.	53.215-1
	Contractor Responsibility for	Receipt of Shipment.	52.247-14
		Receipts for Government property.	45.502-1
	Inspection of Shipping and	Receiving Facilities.	52.247-4
	Definition:	Receiving report	2.101
	Definition:	Recipient	3.801 52.203-12(a)
		Recommendations concerning forms.	53.108
	Definition:	Reconditioned	11.001 52.211-5
	Definition:	Record	24.101 52.224-2(c)(2)
	Definition:	Record drawings	36.102
		Record requirements.	4.601
	Sealed Bidding:	Recording of bids.	14.403
		Records of completed products.	45.505-10
		Records of Government property.	45.105
	Sealed Bidding:	Records of invitations for bids and records of bids.	14.204
		Records of misdirected shipments.	45.505-12
		Records of plant equipment.	45.505-5
		Records of property returned for rework.	45.505-13
		Records of real property.	45.505-7
		Records of special tooling and special test equipment.	45.505-4
		Records of transportation and installation costs of plant equipment.	45.505-11

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contractor	Records Retention	4.7
	Acquisition and supply	records.	4.705-3
	Financial and cost accounting	records.	4.705-1
		Records.	3.406 50.105
	Property	Records.	52.245-1
	Audit and	Records—Negotiation.	52.215-2
	Definition:	Recoupment	35.001
	Definition:	Recovered material	2.101 11.301 52.211-5
		Recovered Material Certification.	52.223-4
	Estimate of Percentage of	Recovered Material Content for EPA-Designated Products.	52.223-9
		Recovering precious metals.	45.607-2
	Cancellation, Rescission, and	Recovery of Funds for Illegal or Improper Activity.	52.203-8
	Definition:	Recruiting and training agency	22.801
		Recruitment costs.	31.205-34
	Definition:	Recurring costs	17.103
	Printed or Copied Double-Sided on	Recycled Paper.	52.204-4
	Quantity analysis, direct delivery, and	reduction of crosshauling and backhauling.	47.305-7
	Suspension or	reduction of payments.	32.503-6
	Suspension or	reduction of performance-based payments.	32.1008
		Reduction or suspension of contract payments upon finding of fraud.	32.006
		Refrigeration Equipment and Air Conditioners.	52.223-12
		Refund of Royalties.	52.227-9
	Requirements for	registration of designers.	36.609-4 52.236-25
	Definition:	Regularly employed	3.801 52.203-12(a)
	Change in Rates or Terms and Conditions of Service for	Regulated Services.	52.241-7
	Agency	regulations.	3.101-3
	Department of Labor	regulations.	22.403-4
	Materials Management Acquisition Regulations System: Arrangement of	regulations.	1.105-2
	Cost Accounting Standards Preambles and	Regulations.	Appendix
	Walsh-Healey Public Contracts Act:	Regulatory exemptions.	22.604-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Labor Standards for Contracts Involving Construction: Statutory and	regulatory requirements.	22.403
		Reimbursement of costs for transfer of contractor inventory.	45.608-7
	Sealed Bidding:	Reinstatement on solicitation mailing lists.	14.205-3
	Definition:	Reinsurance	28.001
	Sealed Bidding: Notice to bidders of	rejection of all bids.	14.404-3
	Sealed Bidding:	Rejection of bids.	14.404
	Sealed Bidding:	Rejection of individual bids.	14.404-2
	Definition:	Related contract	52.245-7 52.245-10 52.245-11
	Interagency Fleet Management System (IFMS) Vehicles and	Related Services.	52.251-2
	Definition:	Related supplies	8.801
		Release of excess funds under terminated contracts.	49.604
	Publicizing Contract Actions:	Release of Information	5.4
		Release of lien.	28.203-5
	Publicizing Contract Actions:	Release of long-range acquisition estimates.	5.404
	Publicizing Contract Actions:	Release procedures.	5.404-1
		Relief from responsibility.	45.503
		Relocation costs.	31.205-35
	Capability to Perform a Contract for the	Relocation of a Federal Office.	52.247-3
	Repair distinguished from	remanufacturing of equipment.	22.1003-6
	Criminal and civil penalties, and further administrative	remedies.	3.104-8
		Remedies.	3.906
	Definition:	Remedy coordination official	32.006-2
		Removal and storage.	45.612
	Dismantling, Demolition, or	Removal of Improvements	37.3
	Termination for Convenience of the Government (Dismantling, Demolition, or	Removal of Improvements).	52.249-3
	Contracts for dismantling, demolition, or	removal of improvements.	46.313
	Inspection—Dismantling, Demolition, or	Removal of Improvements.	52.246-13
		Removal of names from solicitation mailing lists.	14.205-2
	Definition:	Renewable energy	2.101
	Definition:	Renewable energy technology	2.101
	Management and Operating Contracts: Award,	renewal, and extension.	17.605
	Competitive Advantage:	Rent.	45.202-2
		Rental costs.	31.205-36

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Rental equivalents.	45.202-1
		Rental—Use and Charges clause.	45.403
		Rent-free use.	45.404
		Repair distinguished from remanufacturing of equipment.	22.1003-6
		Repetitive acquisitions.	19.804-4
	Follow-on and	repetitive requirements.	37.602-5
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Replacement commodities.	8.715
		Report of shipment (REPSHIP).	42.1406 52.242-12
	Definition:	Reportable property	45.601
	Production Surveillance and	Reporting	42.11
	Toxic Chemical Release	Reporting	23.9
	Definition:	Reporting activity	45.601
		Reporting contract information to the IRS.	4.903
		Reporting labor disputes.	22.101-3
		Reporting of royalties—anticipated or paid.	27.204
		Reporting payment information to the IRS.	4.904
	Data collection and	reporting requirements.	19.202-5
	Production Surveillance and Reporting:	Reporting requirements.	42.1106
		Reporting results of inventories.	45.508-2
		Reporting suspected antitrust violations.	3.303
		Reporting, Redistribution, and Disposal of Contractor Inventory	45.6
	Contract	reporting.	4.6 53.204-2
	Suspension of Payments for Fraud:	Reporting.	32.006-5
	Material Inspection and Receiving	Reports	46.6
		Reports of Government property.	45.505-14
	Special	reports of plant equipment.	45.505-6
	Employment	Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-37
	Department of Labor notices and	reports.	22.1306
	Research and Development Contracting: Scientific and technical	reports.	35.010
	Semiannual enforcement	reports.	22.406-13
	Termination status	reports.	49.105-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contractors' Purchasing Systems Reviews:	Reports.	44.307
	Previous Contracts and Compliance	Reports.	52.222-22
	Production Progress	Reports.	52.242-2
	Responsible Prospective Contractors:	Reports.	9.106-4
		Representation by the offeror.	19.301
		Representation of Limited Rights Data and Restricted Computer Software.	52.227-15
	Sealed Bidding: Annual submission of	representations and certifications.	14.213
	Annual	Representations and Certifications—Sealed Bidding.	52.214-30
	Report of shipment	REPSHIP.	42.1406 52.242-12
		Repurchase against contractor's account.	49.402-6
		Requests for Assistance	41.3
	Contracting by Negotiation:	Requests for proposals.	15.203
	Service Contract Act of 1965, As Amended:	Requests for status or expediting of response.	22.1011-2
	Federal Supply Schedules:	Requests for waivers.	8.404-3
		Requests from Members of Congress.	5.403
	Authorized or	required by statute.	6.302-5
		Required Sources for Helium and Helium Usage Data.	52.208-8
		Required Sources of Supplies and Services	Part 8
	Competition	Requirements	Part 6
	Federal Compliance with Right-to-Know Laws and Pollution Prevention	Requirements	23.10
		Requirements contracts.	16.503
	Selecting and Developing	Requirements Documents	11.1
	Using and Maintaining	Requirements Documents	11.2
	Order of precedence for	requirements documents.	11.101
	Additional	requirements for acquisitions involving bundling.	7.107
	Acquisition Plans: Additional	requirements for major systems.	7.106
		Requirements for Registration of Designers.	52.236-25
		Requirements for security.	28.201
		Requirements for use of forms.	53.101
	Acquisitions subject to qualification	requirements.	9.206
	Agency distribution	requirements.	4.202
	Changes in status regarding qualification	requirements.	9.207
	Consent to Subcontracts: Advance notification	requirements.	44.201-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Consent to Subcontracts: Consent	requirements.	44.201-1
	Consent to Subcontracts: Consent and advance notification	requirements.	44.201
	Contractor Qualifications: Solicitation	requirements.	9.306
	Establishing and Administering Federal Supply Schedules: Coordination	requirements.	38.201
	Interagency Acquisitions Under the Economy Act: Determinations and findings	requirements.	17.503
	Leasing of Motor Vehicles: Contract	requirements.	8.1103
	Leasing of Motor Vehicles: Presolicitation	requirements.	8.1102
	Policy	requirements.	44.402
	Record	requirements.	4.601
	Reporting	requirements.	42.1106
	Service Contracting: Special acquisition	requirements.	37.114
	Standby or layaway	requirements.	45.302-5
	Statutory	requirements.	3.402 19.702 22.602 22.1002
	Statutory and related prohibitions, restrictions, and	requirements.	3.104-3
	Subcontracting plan	requirements.	19.704
	Surveillance	requirements.	42.1104
		Requirements.	6.303-1 41.301 52.216-21
	Contractor Inspection	Requirements.	52.246-1
	Clearance and Documentation	Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	52.247-52
	Voiding and	Rescinding Contracts	3.7
	Cancellation,	Rescission, and Recovery of Funds for Illegal or Improper Activity.	52.203-8
	Market	Research	Part 10
	Definition:	Research and development	31.205-48
	Inspection of	Research and Development (Short Form).	52.246-9
	Cosponsored	research and development activities.	27.408
		Research and Development Contracting	Part 35
		Research and development contracting (SF 298).	53.235
		Research and development contracts (short form).	46.309
	Cost-reimbursement	research and development contracts.	46.308

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Fixed-price	research and development contracts.	46.307
	Payments under Fixed-Price	Research and Development Contracts.	52.232-2
	Deferred	research and development costs.	31.205-48
	Subcontracting	research and development effort.	35.009
	Defense Production Pools and	Research and Development Pools	9.7
	Use of Government production and research property on independent	research and development programs.	45.406
	Publicizing requirements and expanding	research and development sources.	35.004
	Default (Fixed-Price	Research and Development).	52.249-9
	Liquidated Damages—Supplies, Services, or	Research and Development.	52.211-11
	Inspection of	Research and Development—Cost Reimbursement.	52.246-8
	Inspection of	Research and Development—Fixed Price.	52.246-7
	Other Than Full and Open Competition: Industrial mobilization; engineering, developmental, or	research capability; or expert services.	6.302-3
	Contracts for	research with educational institutions and nonprofit organizations.	35.015
	Settlement Agreements:	Reservations.	49.109-2
		Residual Powers	50.4
	Definition:	Residual value	2.101
		Residual value of special tooling and special test equipment.	45.204
	Publicizing and	response time.	5.203
	Career Development, Contracting Authority, and	Responsibilities	1.6
	Contracting authority and	responsibilities (SF 1402).	53.201-1
		Responsibilities and cooperation among Government officials.	32.605
		Responsibilities for establishment of a qualification requirement.	9.204
		Responsibilities of contracting officers.	3.603 4.403 7.204 47.301-1
	Acquisition Planning: Agency-head	responsibilities.	7.103
	Advisory and Assistance Services: Contracting officer	responsibilities.	37.205
	Cognizant Federal agency	responsibilities.	30.201-7
	Competition Advocates: Duties and	responsibilities.	6.502
	Nonpersonal Health Care Services: Contracting officer	responsibilities.	37.402
	Organizational and Consultant Conflicts of Interest: Contracting officer	responsibilities.	9.504
	Permits and	responsibilities.	36.507 52.236-7
	Contracting by Negotiation: Source Selection:	Responsibilities.	15.303

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Certificates of Competency and Determinations of	Responsibility	19.6
		Responsibility and liability for Government property.	45.103
		Responsibility for acceptance.	46.502
		Responsibility for executing agreements.	42.1202
	Contractor	Responsibility for Loading and Unloading.	52.247-15
	Contractor	Responsibility for Receipt of Shipment.	52.247-14
	Contractor	Responsibility for Returning Undelivered Freight.	52.247-16
		Responsibility for supplies.	46.316 52.246-16
		Responsibility of the Architect-Engineer Contractor.	52.236-23
	Service Contracting: Contracting officer	responsibility.	37.103
	Subcontractor	responsibility.	9.104-4
	Definition:	Responsible audit agency	2.101
		Responsible bidder—reasonableness of price.	14.408-2
	Definition:	Responsible official	32.601
	Definition:	Responsible prospective contractor	2.101
		Responsible Prospective Contractors.	9.1 53.209-1
	Only one	responsible source and no other supplies or services will satisfy agency requirements.	6.302-1
		Responsiveness of bids.	14.301
	Definition:	Restricted computer software	27.401 52.227-14 52.227-19 52.227-20
	Definition:	Restricted rights	27.401
		Restriction on Severance Payments to Foreign Nationals.	52.237-8
		Restrictions on Certain Foreign Purchases.	52.225-13
	Sealed Bidding:	Restrictions on disclosure of descriptive literature.	14.404-4
		Restrictions on purchase or retention of contractor inventory.	45.604
		Restrictions on Subcontractor Sales to the Government.	52.203-6
	Unreasonable	restrictions on subcontractor sales.	3.503
	Contractor Records	Retention	4.7
	Patent Rights—	Retention by the Contractor (Long Form).	52.227-12
	Patent Rights—	Retention by the Contractor (Short Form).	52.227-11
	Calculation of	retention periods.	4.704

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Specific	retention periods.	4.705
	Fixed-Price Contracts: Price Redetermination—	Retroactive.	52.216-6
		Return to suppliers.	45.605-2
		Returnable cylinders.	47.305-17 52.247-66
	Contractor Responsibility for	Returning Undelivered Freight.	52.247-16
	Contracting by Negotiation: Submission, modification,	revision, and withdrawal of proposals.	15.208
	Technical Data Declaration,	Revision, and Withholding of Payment—Major Systems.	52.227-21
		Right of First Refusal of Employment.	52.207-3
	Prime contractor's	rights and obligations.	49.108-2
		Rights In Data and Copyrights	27.4
		Rights in Data—Existing Works.	52.227-18
		Rights in Data—General.	52.227-14
		Rights in Data—Special Works.	52.227-17
		Rights to Proposal Data (Technical).	52.227-23
		Rights to technical data in successful proposals.	27.407
	Pollution Prevention and	Right-to-Know Information.	52.223-5
	Federal Compliance with	Right-to-Know Laws and Pollution Prevention Requirements	23.10
	Acquisition of Information Technology: Management of	risk.	39.102
		Risk.	9.305
		Risk-pooling arrangements.	28.304
	Materials Management Acquisition Regulations System:	Role of the Acquisition Team.	1.102-4
		Royalties and other costs for use of patents.	31.205-37
	Adjustment of	royalties.	27.205
	Clause for refund of	royalties.	27.206-2
	Refund of	royalties.	27.206 52.227-9
	Reporting of	royalties—anticipated or paid.	27.204
	Solicitation provision for	royalty information.	27.204-2
		Royalty Information.	52.227-6
	General	rules for solicitation of bids.	14.202
	Walsh-Healey Public Contracts Act:	Rulings and interpretations of the Act.	22.605
		Safeguarding Classified Information Within Industry	4.4
		Safeguarding classified information within industry (DD Form-254, DD Form-441).	53.204-1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Receipt and	safeguarding of bids.	14.401
		Safeguards	3.1
		Sale of surplus contractor inventory.	45.610
	Definition:	Salvage	45.501
	Definition:	Sanctioned European Union country construction	25.003
	Definition:	Sanctioned European Union country end product	25.003 52.225-15
		Sanctioned European Union Country End Products.	52.225-15
	Definition:	Sanctioned European Union country services	25.003
		Sanctioned European Union Country Services.	52.225-16
	Definition:	Sanctioned European Union member state	25.003 52.225-15 52.225-16
	Only one responsible source and no other supplies or services will	satisfy agency requirements.	6.302-1
		SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).	52.222-47
	Federal Supply	Schedules	8.4
		Schedules for construction contracts.	36.515 52.236-15
	Factors to consider in establishing	schedules.	11.402
	Federal Supply Schedules: Using	schedules.	8.404
		Scientific and technical reports.	35.010
		Scope and Duration of Contract.	52.241-3
	Definition:	Scrap	45.501
	Records of	scrap or salvage.	45.505-8
		Scrap.	45.607
	Definition:	Screening completion date	45.601
		Screening of contractor inventory.	45.608
	Waiver of	screening requirements.	45.608-6
	Agency	screening.	45.608-3
	Limited	screening.	45.608-4
	Special items	screening.	45.608-5
	Standard	screening.	45.608-2
	Clauses for	sealed bid contracts (excluding construction).	27.203-2
	Applying Pub. L. 85-804 to advance payments under	sealed bid contracts.	32.405

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Two-Step	Sealed Bidding	14.5
	Use of	Sealed Bidding	14.1
		Sealed Bidding and Competitive Proposals	6.4
	Special procedures for	sealed bidding in construction contracting.	36.213
	Elements of	sealed bidding.	14.101
		Sealed bidding.	Part 14 53.214
	Annual Representations and Certifications—	Sealed Bidding.	52.214-30
	Audit and Records—	Sealed Bidding.	52.214-26
	Contract Award—	Sealed Bidding.	52.214-10
	Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step	Sealed Bidding.	52.214-23
	Order of Precedence—	Sealed Bidding.	52.214-29
	Place of Performance—	Sealed Bidding.	52.214-14
	Price Reduction for Defective Cost or Pricing Data—Modifications—	Sealed Bidding.	52.214-27
	Step Two of Two-Step	Sealed Bidding.	52.214-25
	Subcontractor Cost or Pricing Data—Modifications—	Sealed Bidding.	52.214-28
	Contract Award—	Sealed Bidding—Construction.	52.214-19
	Notice of Cost Comparison	Sealed-Bid.	52.207-1
	Definition:	Secretarial level	50.001
	Sureties and Other	Security for Bonds	28.2
		Security for Government financing.	32.202-4
		Security interests by an individual surety.	28.203-1
		Security Requirements.	52.204-2
	Privacy or	Security Safeguards.	52.239-1
		Security, supervision, and covenants.	32.409-3
	Additional bond or	security.	28.106-3
	Other Than Full and Open Competition: National	security.	6.302-6
	Sureties and Other Security for Bonds: Requirements for	security.	28.201
	Additional Bond	Security.	52.228-2
	Definition:	Segment	2.101
	Definition:	Segregated facilities	52.222-21
	Prohibition of	Segregated Facilities.	52.222-21
		Segregation of Government property.	45.507
		Selecting and Developing Requirements Documents	11.1

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Selecting Contract Types	16.1
	Architect-Engineer Contracts:	Selection authority.	36.602-4
	Architect-Engineer Contracts:	Selection criteria.	36.602-1
		Selection of firms for architect-engineer contracts.	36.602
	Two-Phase Design-Build	Selection Procedures	36.3
	Use of two-phase design-build	selection procedures.	36.301
	Service Contracting:	Selection procedures.	37.602-3
	Contracting by Negotiation: Source	Selection Processes and Techniques	15.1
	Contracting Officer:	Selection, appointment, and termination of appointment.	1.603
	Release of information on firm	selection.	36.607
	Contracting Officer:	Selection.	1.603-2
	Definition:	Self-insurance	2.101
	Definition:	Self-insurance charge	31.001
		Self-insurance.	28.308
		Selling costs.	31.205-38
	Definition:	Senior procurement executive	2.101
		Seniority lists.	22.1020
	Definition:	Separate contract	41.101
		Separate contracts.	41.205
	Definition: Bundling—	Separate smaller contract	2.101
		Service and warranty costs.	31.205-39
	Nonrefundable, Nonrecurring	Service Charge.	52.241-12
	Definition:	Service contract	22.1001 37.101
	Definition:	Service Contract Act	22.1001
		Service Contract Act of 1965, as Amended.	22.10 52.222-41
		Service Contract Act of 1965.	37.107
	Exemption from Application of	Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain Information Technology, Scientific and Medical, and/or Office and Business Equipment—Contractor Certification.	52.222-48
		Service Contract Act—Place of Performance Unknown.	52.222-49
	Fair Labor Standards Act and	Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).	52.222-43
	Fair Labor Standards Act and	Service Contract Act—Price Adjustment.	52.222-44

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Service Contracting	Part 37
	Competition in	service contracting.	37.105
	Management Oversight of	Service Contracts	37.5
	Payment under Communication	Service Contracts with Common Carriers.	52.232-6
	Clauses for supply or	service contracts.	48.201
	Cost-reimbursement	service contracts.	46.305
	Describing Agency Needs: Purchase descriptions for	service contracts.	11.106
	Fixed-price	service contracts.	46.304
	Funding and term of	service contracts.	37.106
		Service Contracts—General	37.1
	Definition:	Service employee	22.1001 52.222-41
	Additional classes of	service employees.	22.1019
	Change in Rates or Terms and Conditions of	Service for Regulated Services.	52.241-7
	Change in Rates or Terms and Conditions of	Service for Unregulated Services.	52.241-8
	Definition:	Service life	31.001
	Multiple	Service Locations.	52.241-11
		Service of Protest.	52.233-2
		Service Provisions.	52.241-6
	Means of obtaining	service.	51.203
	Definition:	Serviceable or usable property	45.601
	Definition:	Service-disabled veteran-owned small business concern	2.101
	Contract Administration	Services	42.2
	Definition:	Services	29.401-6(a) 52.246-4 52.246-5
	Architect-engineer	services (SF's 252, 254, 255, 1421).	53.236-2
	Termination for Convenience of the Government	Services (Short Form).	52.249-4
	Liability for Government Property (Demolition	Services Contracts).	52.245-6
		Services of quasi-military armed forces.	37.109
	Termination (Personal	Services).	52.249-12
	Extension of	services.	37.111
	Providing evaluation	services.	9.505-3
	Continuity of	Services.	52.237-3
	Limitation of Liability—	Services.	52.246-25

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Warranty of	Services.	52.246-20
	Inspection of	Services—Cost-Reimbursement.	52.246-5
	Inspection of	Services—Fixed-Price.	52.246-4
	Accessorial	Services—Moving Contracts.	52.247-13
	Routine	setoff.	32.611
	Withholding and	setoff.	32.612
	Definition:	Settlement agreement	49.001
		Settlement agreement.	49.109
			49.602-5
	Formats for termination for convenience	settlement agreements.	49.603
	Granting subcontract	settlement authorization.	49.606
		Settlement by determination.	49.109-7
	Definition:	Settlement date	32.902
		Settlement negotiation memorandum.	49.110
		Settlement of reservations.	49.603-9
		Settlement of subcontract settlement proposals.	49.108
		Settlement of terminated incentive contracts.	49.115
		Settlement procedure.	49.108-3
	Definition:	Settlement proposal	49.001
	Submission of	settlement proposal (fee only).	49.304-2
	Audit of	settlement proposal.	49.303-3
	Submission of	settlement proposal.	49.303-1
	Audit of prime contract	settlement proposals and subcontract settlements.	49.107
	Bases for	settlement proposals.	49.206-2
	Joint settlement of two or more	settlement proposals.	49.109-6
	Request to settle subcontractor	settlement proposals.	49.605
	Submission of	settlement proposals.	49.206-1
		Settlement proposals.	49.206
	Methods of	settlement.	49.103
	No-cost	settlement.	49.109-4
	Limitation on	settlements.	49.207
	Partial	settlements.	49.109-5
	Review of proposed	settlements.	49.111
		Severance payments to foreign nationals.	37.113
	Restriction on	Severance Payments to Foreign Nationals.	52.237-8

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Waiver of Limitation on Contracting authority and responsibilities	Severance Payments to Foreign Nationals.	52.237-9
	Contract financing	SF 1402.	53.201-1
	Research and development contracting	SF 1443.	53.232
	Contract Modifications	SF 298.	53.235
	Novation and change-of-name agreements	SF 30.	53.243
	Simplified Acquisition Methods: Preparation of Notice	SF 30.	53.242-1
	Procedures for preparing and submitting Notice	SF 44, Purchase Order—Invoice—Voucher.	13.306
	Requirement to submit Notice	SF 98/98a.	22.1008-1
	Preparation of	SF 98/98a.	22.1008
	Simplified acquisition procedures	SF 98/98a.	22.1007
	Taxes	SF 98a.	22.1008-2
	Architect-engineer services	SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348.	53.213
	Application of labor laws to Government acquisitions	SF's 1094, 1094-A.	53.229
	Standard forms	SF's 252, 254, 255, 1421.	53.236-2
	Definition:	SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347.	53.222
	Definition:	SF's.	53.301
	Definition:	Shall	2.101
	Definition:	Sharing alternative—no-cost settlement method.	48.104-4
	Definition:	Sharing arrangements.	48.104
	Definition:	Sharing base	48.001 52.248-1
	Definition:	Sharing period	48.001 52.248-1
	Value Engineering: Determining	sharing period.	48.104-1
	Definition:	Shipment	2.101
	Report of	Shipment (REPSHIP).	52.242-12
	Discrepancies incident to	shipment of supplies.	42.1405
	Contractor Responsibility for Receipt of	Shipment.	52.247-14
	F.a.s. Vessel, Port of	Shipment.	52.247-36
	F.o.b. Destination—Evidence of	Shipment.	52.247-48
	F.o.b. Vessel, Port of	Shipment.	52.247-37
	Clearance and Documentation Requirements—	Shipments by parcel post or other classes of mail.	42.1404
		Shipments to DOD Air or Water Terminal Transshipment Points.	52.247-52
		Shipments to ports and air terminals.	47.305-6
		Shipments within CONUS.	47.304-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Parcel post eligible	shipments.	42.1404-1
	Payment for	shipments.	51.105
	Records of misdirected	shipments.	45.505-12
	Shipping documents covering f.o.b. origin	shipments.	42.1403
	F.o.b. Origin, Prepaid Freight—Small Package	Shipments.	52.247-65
	F.o.b. Origin—Carload and Truckload	Shipments.	52.247-59
	F.o.b. Origin—Minimum Size of	Shipments.	52.247-61
	Loading, Blocking, and Bracing of Freight Car	Shipments.	52.247-58
	Multiple	Shipments.	52.247-18
	Annotation and distribution of	shipping and billing documents.	47.207-9
	Inspection of	Shipping and Receiving Facilities.	52.247-4
	Transportation in Supply Contracts:	Shipping characteristics.	47.305-16
	Guaranteed	Shipping Characteristics.	52.247-60
		Shipping documents covering f.o.b. origin shipments.	42.1403
		Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	52.247-46
	Definition:	Shop drawings	2.101
	Government-Furnished Property	Short Form.	52.245-4
	Inspection of Research and Development	Short Form.	52.246-9
	Termination for Convenience of the Government (Fixed-Price)	Short Form.	52.249-1
	Termination for Convenience of the Government (Services)	Short Form.	52.249-4
		Short selection process for contracts not to exceed the simplified acquisition threshold.	36.602-5
	Definition:	Should	2.101
		Should-cost review.	15.407-4
	Determinations and Findings:	Signatory authority.	1.707
	Definition:	Signature or signed	2.101
	Contracting officer's	signature.	4.101
	Contractor's	signature.	4.102
	Definition:	Significant revisions	1.501-1
		Simplified Acquisition Methods	13.3
	Definition:	Simplified acquisition procedures	2.101
		Simplified Acquisition Procedures	Part 13
		Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, OF's 336, 347, 348).	53.213
		Simplified acquisition procedures financing.	32.003

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Simplified acquisition threshold	2.101
	Government contract quality assurance for acquisitions at or below the	simplified acquisition threshold.	46.404
	Short selection process for contracts not to exceed the	simplified acquisition threshold.	36.602-5
	Terms and Conditions—	Simplified Acquisitions (Other Than Commercial Items).	52.213-4
	Sealed Bidding:	Simplified contract format.	14.201-9
	Indefinite-Delivery Contracts:	Single or Multiple Awards.	52.216-27
	Definition:	Single, Governmentwide point of entry	2.101
		Single-movement contracts.	47.204
	Differing	Site Conditions.	52.236-2
		Site investigation and conditions affecting the work.	36.503 52.236-3
	Definition:	Site of construction	22.801
	Definition:	Site of the work	22.401
		Site Visit (Construction).	52.236-27
		Site visit.	36.523 52.237-1
		Size standards.	19.102
	Definition:	Small business concern	19.001 52.212-3 52.219-1 52.219-7 52.219-8
		Small Business Contract Administration	42.16
	Definition:	Small business firm	27.301 52.227-11 52.227-12
	Encouraging	small business participation in acquisitions.	19.202-1
		Small Business Program Representations.	52.219-1
		Small business programs.	Part 19
	Locating	small business sources.	19.202-2
	Definition:	Small business subcontractor	2.101
	Setting aside a class of acquisitions for	small business.	19.503
	Definition:	Small disadvantaged business concern	2.101
	F.o.b. Origin, Prepaid Freight—	Small Package Shipments.	52.247-65
	Consolidation of	small shipments and the use of stopoff privileges.	47.305-8
		Socioeconomic Programs	Subchapter D

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Other	Socioeconomic Programs	Part 26
	Computer	software.	12.212
	Definition:	Sole source acquisition	2.101
	Definition:	Solicitation	2.101
		Solicitation and acceptance of gratuities by Government personnel.	3.101-2
		Solicitation and Receipt of Proposals and Information	15.2
		Solicitation and Receipt of Proposals.	53.215-1
	Streamlined Procedures for Evaluation and Streamlined	Solicitation for Commercial Items	12.6
	Request for Information or	solicitation for commercial items.	12.603
	Sealed Bidding: Excessively long	Solicitation for Information or Planning Purposes.	52.215-3
	Sealed Bidding: Release of	solicitation mailing lists.	14.205-4
	Sealed Bidding: Removal of names from	solicitation mailing lists.	14.205-5
	Sealed Bidding:	solicitation mailing lists.	14.205-2
		Solicitation mailing lists.	14.205
		Solicitation of Bids	14.2
	General rules for	solicitation of bids.	14.202
		Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.	28.311
		Solicitation provision for royalty information.	27.204-2
	Definition:	Solicitation provision or provision	2.101
		Solicitation Provisions and Contract Clauses	Part 52
		Solicitation provisions and contract clauses (Matrix).	52.301
		Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items	12.3
	Contractor Qualifications:	Solicitation requirements.	9.306
	Acquisition of Commercial Items: Procedures for	solicitation, evaluation, and award.	12.203
	Contracting by Negotiation: Amending the	solicitation.	15.206
	Major System Acquisition: Mission-oriented	solicitation.	34.005-2
	Preparing the	solicitation.	19.705-3
	Sealed Bidding: Master	solicitation.	14.203-3
	Alterations in	Solicitation.	52.252-3
	Sealed Bidding:	Solicitations for informational or planning purposes.	14.105
		Solicitations issued without wage determinations.	22.404-4
	Availability of	solicitations.	5.102

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Contracting by Negotiation: Issuing	solicitations.	15.205
	Contracting for Construction: Distribution of advance notices and	solicitations.	36.211
	Methods of	soliciting bids.	14.203
		Soliciting competition, evaluation of quotations or offers, award and documentation.	13.106
	Only one responsible	source and no other supplies or services will satisfy agency requirements.	6.302-1
	Contracting by Negotiation:	Source Selection	15.3
	Contracting by Negotiation:	Source selection decision.	15.308
	Definition:	Source selection evaluation board	3.104-1
	Definition:	Source selection information	2.101
	Disclosure, protection, and marking of contractor bid or proposal information and	source selection information.	3.104-4
	Contracting by Negotiation:	Source selection objective.	15.302
	Contracting by Negotiation: Lowest price technically acceptable	source selection process.	15.101-2
	Contracting by Negotiation:	Source Selection Processes and Techniques	15.1
	Required	Sources for Helium and Helium Usage Data.	52.208-8
	Required	Sources of Supplies and Services	Part 8
		Special Aspects of Contracting for Construction	36.2
		SPECIAL CATEGORIES OF CONTRACTING	Subchapter F
	Definition:	Special competency	2.101
	Matters requiring	special consideration.	29.304
		Special construction and printing.	53.106
		Special Contracting Methods	Part 17
		Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	22.13
		Special items screening.	45.608-5
		Special procedure for cost-reimbursement contracts for construction.	36.215
		Special procedures for price negotiation in construction contracting.	36.214
		Special procedures for sealed bidding in construction contracting.	36.213
		Special procedures for unusually hazardous or nuclear risks.	50.403
		Special Requirements for the Acquisition of Commercial Items	12.2
	Synopsis of Proposed Contract Actions:	Special situations.	5.205
	Responsible Prospective Contractors:	Special standards.	9.104-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Special test equipment	45.101 52.245-18
	Special tooling and	special test equipment costs.	31.205-40
	Acquiring	special test equipment.	45.307-2
	Records of special tooling and	special test equipment.	45.505-4
	Residual value of special tooling and	special test equipment.	45.204
		Special Test Equipment.	52.245-18
	Definition:	Special tooling	45.101 52.245-17
		Special tooling and special test equipment costs.	31.205-40
	Records of	special tooling and special test equipment.	45.505-4
	Residual value of	special tooling and special test equipment.	45.204
		Special tooling under cost-reimbursement contracts.	45.306-2
		Special tooling under fixed-price contracts.	45.306-3
	Providing	special tooling.	45.306
	Providing existing	special tooling.	45.306-1
		Special Tooling.	52.245-17
		Specific Quantities Unknown.	52.247-62
		Specific retention periods.	4.705
	Definition:	Specifically Authorized Representative (SAR)	52.243-7
	Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled:	Specification changes.	8.712
		Specifications and drawings for construction.	36.521 52.236-21
	Availability of	Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Availability of	Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.	52.211-1
	Availability for Examination of	Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-4
	Availability of	Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.	52.211-3
	Warranty of Systems and Equipment under Performance	Specifications or Design Criteria.	52.246-19
	Contractor Qualifications: Preparing	specifications or work statements.	9.505-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Identification and availability of	specifications.	11.201
	Contracting for Construction:	Specifications.	36.202
	Definition:	Specified payment date	32.902
	Definition:	Sponsor	35.017(b)
	Definition:	Spread-gain actuarial cost method	31.001
		Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements	36.7
		Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.	36.701
	Definition:	Standard cost	31.001
		Standard forms (SF's).	53.301
		Standard screening.	45.608-2
	Maintenance of	standardization documents.	11.202
	Selecting and Developing Requirements Documents:	Standardization program.	11.102
		Standards for use.	50.401
		Standards of conduct.	3.101
	Guiding Principles of the Materials Management Acquisition System: Performance	standards.	1.102-2
	Responsible Prospective Contractors: Application of	standards.	9.104-3
	Responsible Prospective Contractors: General	standards.	9.104-1
	Responsible Prospective Contractors: Special	standards.	9.104-2
	Responsible Prospective Contractors:	Standards.	9.104
		Standby or layaway requirements.	45.302-5
	Definition:	State	3.801 52.203-12(a)
		State and local governments.	42.705-4
	North Carolina	State and Local Sales and Use Tax.	52.229-2
	Definition:	State and local taxes	2.101
		State and Local Taxes.	29.3 52.229-1
	Federal and	State labor requirements.	22.102
	Federal,	State, and Local Taxes (Noncompetitive Contract).	52.229-4
	Federal,	State, and Local Taxes.	52.229-3
	Contracts with	State, Local, and Federally Recognized Indian Tribal Governments	31.6
		Statement of Equivalent Rates for Federal Hires.	52.222-42

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Financial	Statement.	52.247-6
	Changes in	status regarding qualification requirements.	9.207
	Other Than Full and Open Competition: Authorized or required by	statute.	6.302-5
		Statutory and delegated authority.	41.103
	Labor Standards for Construction:	Statutory and regulatory requirements.	22.403
		Statutory and related prohibitions, restrictions, and requirements.	3.104-3
		Statutory authority.	32.201 32.401
	Contracting for Construction:	Statutory cost limitations.	36.205
	Walsh-Healey Public Contracts Act: Service Contract Act of 1965, As Amended:	Statutory exemptions.	22.604-1 22.1003-3
	Contingent Fees:	Statutory requirements.	3.402
	Contract Work Hours and Safety Standards Act: Service Contract Act: Walsh-Healey Public Contracts Act:	Statutory requirements.	22.301 22.1002 22.602
	Definition:	Stock record	45.501
	Consolidation of small shipments and the use of	stopoff privileges.	47.305-8
		Stopping in Transit for Partial Unloading.	52.247-19
		Stop-work order.	42.1303 52.242-15
		Stop-Work Order—Facilities.	52.242-16
	Suspension of Work,	Stop-Work Orders, and Government Delay of Work	42.13
	Operations and	Storage Areas.	52.236-10
	Special	storage at the contractor's risk.	45.612-2
	Special	storage at the Government's expense.	45.612-3
	Government Contract Files:	Storage, handling, and disposal of contract files.	4.805
	Removal and	storage.	45.612
		Streamlined evaluation of offers.	12.602
		Streamlined Procedures for Evaluation and Solicitation for Commercial Items	12.6
		Streamlined solicitation for commercial items.	12.603
	Federal Acquisition	Streamlining Act of 1994 list of inapplicable laws.	13.005
	Protection of Existing Vegetation,	Structures, Equipment, Utilities, and Improvements.	52.236-9
		Structuring multiple-incentive contracts.	16.402-4

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Subcontract	3.502-1 12.001 15.401 19.701 22.801 44.101 52.203-7 52.219-9 52.244-2 52.244-6
		Subcontract administration.	30.603
		Subcontract pricing considerations.	15.404-3
	Granting	subcontract settlement authorization.	49.606
	Settlement of	subcontract settlement proposals.	49.108
	Audit of prime contract settlement proposals and Responsibilities of the contracting officer under the	subcontract settlements.	49.107
	Notices of	subcontracting assistance program.	19.705
		subcontracting opportunities.	5.206
		Subcontracting plan requirements.	19.704
	Determining the need for a	subcontracting plan.	19.705-2
	Reviewing the	subcontracting plan.	19.705-4
		Subcontracting Policies and Procedures	Part 44
		Subcontracting research and development effort.	35.009
	Protecting the Government's Interest when	Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.	52.209-6
	Debarment, Suspension, and Ineligibility: Restrictions on	subcontracting.	9.405-2
	Competition in	Subcontracting.	52.244-5
	Definition:	Subcontractor	3.502-1 22.801 44.101 52.203-7
		Subcontractor assertions of nonpayment.	32.112-1
	Postaward	subcontractor conferences.	42.505
		Subcontractor Cost or Pricing Data.	52.215-12
		Subcontractor Cost or Pricing Data—Modifications.	52.215-13
		Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	52.214-28
		Subcontractor Disclosure Statements.	30.202-8

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Subcontractor employee	52.203-7(a)
		Subcontractor inventory.	45.614
		Subcontractor kickbacks.	3.502
	Prospective	Subcontractor Requests for Bonds.	52.228-12
	Payments:	Subcontractor requests for information.	32.112-2
	Contractor Qualifications:	Subcontractor responsibility.	9.104-4
	Unreasonable restrictions on	subcontractor sales.	3.503
	Delay in settling	subcontractor settlement proposals.	49.108-6
	Request to settle	subcontractor settlement proposals.	49.605
		Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	52.244-4
	Bonds and Other Financial Protections: Payment to	subcontractors or suppliers.	28.106-8
		Subcontractor's rights.	49.108-1
	Nonpayment of	subcontractors under contracts for noncommercial items.	32.112
	Property in possession of	subcontractors.	45.510
	Consent to	Subcontracts	44.2
		Subcontracts (Labor Standards).	52.222-11
		Subcontracts for Commercial Items and Commercial Components.	44.4
		Subcontracts under prime contracts providing progress payments.	32.504
	Assignment of rights under	subcontracts.	49.108-8
	Government assistance in settling	subcontracts.	49.108-7
	Loan guarantees for	subcontracts.	32.306
		Subcontracts.	52.244-2
	Labor Standards for Construction:	Subcontracts.	22.406-5
	Patent Rights under Government Contracts:	Subcontracts.	27.304-4
	Quality Assurance:	Subcontracts.	46.405
	Definition:	Subject invention	27.301 52.227-11 52.227-12 52.227-13
		Submission of Bids.	14.3 52.214-5
		Submission of Commercial Transportation Bills to the General Services Administration for Audit.	52.247-67
	Instructions for	submission of cost or pricing data or information other than cost or pricing data.	15.403-5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Submission of Electronic Funds Transfer Information with Offer.	52.232-38
		Submission of inventory schedules.	49.206-3 49.303-2
	Required time of	submission of Notice.	22.1008-7
		Submission of settlement proposal (fee only).	49.304-2
		Submission of settlement proposal.	49.206-1 49.303-1
		Submission of vouchers.	49.304-3
	Sealed Bidding:	Submission, modification, and withdrawal of bids.	14.304
	Contracting by Negotiation:	Submission, modification, revision, and withdrawal of proposals.	15.208
	Bid	submission.	14.302
	Definition:	Substantial evidence	2.101
	Definition:	Substantially as follows or substantially the same as	2.101
		Substitution of assets.	28.203-4
	Contracting by Negotiation: Award to	successful offeror.	15.504
	Incentive Contracts: Incentive Price Revision—	Successive Targets.	52.216-17
	Required Sources of Supplies and Services: Change-of-name and	successor in interest procedures.	8.716
	Definition:	Summary record	45.501
		Superintendence by the Contractor.	52.236-6
	Determinations and Findings:	Supersession and modification.	1.705
	Security,	supervision, and covenants.	32.409-3
		Supervision, Labor, or Materials.	52.247-12
	Definition:	Supplemental agreement	2.101
	Definition:	Supplies	2.101 52.246-2 52.246-3 52.246-17 52.246-18 52.246-19
	Required Sources of	Supplies and Services	Part 8
	Warranty of	Supplies of a Complex Nature.	52.246-18
	Warranty of	Supplies of a Noncomplex Nature.	52.246-17
	Other Than Full and Open Competition: Only one responsible source and no other	supplies or services will satisfy agency requirements.	6.302-1
	Nonconforming	supplies or services.	46.407
	Liquidated Damages—	Supplies, Services, or Research and Development.	52.211-11

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Sealed Bidding: Economic purchase quantities—	supplies.	14.212
	Fixed-Price Contracts: Economic Price Adjustment—Semistandard	Supplies.	52.216-3
	Fixed-Price Contracts: Economic Price Adjustment—Standard	Supplies.	52.216-2
	Responsibility for	Supplies.	52.246-16
	Inspection of	Supplies—Cost-Reimbursement.	52.246-3
	Inspection of	Supplies—Fixed-Price.	52.246-2
	Default (Fixed-Price	Supply and Service).	52.249-8
	Transportation in	Supply Contracts	47.3
		Supply contracts.	11.701
	Acquisition and	supply records.	4.705-3
	Authorization to use Government	supply sources.	51.102
	Ordering from Government	supply sources.	51.103
	Use of other Government	supply sources.	8.002
	Government	Supply Sources.	52.251-1
		Sureties and Other Security for Bonds	28.2
	Definition:	Surety	2.101
	Contract	surety bonds and loan guarantees.	32.304-7
	Bonds and Other Financial Protection: Substitution of	surety bonds.	28.106-2
	Consent of	surety.	28.106-5
	Security interests by an individual	surety.	28.203-1
		Surety-takeover agreements.	49.404
	Sale of	surplus contractor inventory.	45.610
	Definition:	Surplus property	45.601
	Definition:	Surplus Release Date (SRD)	45.601
	Production	Surveillance and Reporting	42.11
		Surveillance requirements.	42.1104
		Surveillance.	44.304
	Definition:	Surveying activity	9.101
	Responsible Prospective Contractors:	Surveys of nonprofit agencies serving people who are blind or have other severe disabilities under the Javits-Wagner-O'Day (JWOD) Program.	9.107
	Responsible Prospective Contractors: Conditions for preaward	surveys.	9.106-1
	Responsible Prospective Contractors: Interagency preaward	surveys.	9.106-3
	Responsible Prospective Contractors: Preaward	surveys.	9.106
	Responsible Prospective Contractors: Requests for preaward	surveys.	9.106-2

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Quantity	Surveys.	52.236-16
	Reports of	Suspected Antitrust Violations	3.3
	Definition:	Suspension	2.101
	Suspension of payments, termination of contract, and debarment and	suspension actions.	23.506
	Reduction or	suspension of contract payments upon finding of fraud.	32.006
	Withholding from or	suspension of contract payments.	22.406-9
		Suspension of Work, Stop-Work Orders, and Government Delay of Work	42.13
		Suspension of work.	42.1302 52.242-14
		Suspension or reduction of payments.	32.503-6
		Suspension or reduction of performance-based payments.	32.1008
	Debarment,	Suspension, and Ineligibility	9.4
	Certification regarding debarment,	suspension, proposed debarment, and other responsibility matters.	52.209-5
	Preparation and transmittal of	synopses of awards.	5.302
		Synopses of Contract Awards	5.3
		Synopses of Proposed Contract Actions	5.2
	Synopses of Proposed Contract Actions: Preparation and transmittal of	synopses.	5.207
		Synopsis and posting requirements.	13.105
	Definition:	System of records on individuals	24.101 52.224-2
	Availability of Specifications Listed in the DoD Index of Specifications and Standards (DoDISS) and Descriptions Listed in the Acquisition Management	Systems and Data Requirements Control List, DoD 5010.12-L.	52.211-2
	Warranty of	Systems and Equipment under Performance Specifications or Design Criteria.	52.246-19
	Definition:	Systems and other concept formulation studies	31.205-18
	Contractor Qualifications: Providing	systems engineering and technical direction.	9.505-1
		Table 15-2—Instructions for Submitting Cost or Pricing Data	15.408
		Tailoring of provisions and clauses for the acquisition of commercial items.	12.302
	Definition:	Tangible capital asset	31.001
	Definition:	Tanker	47.501
	Definition:	Target cost	52.216-10
	Definition:	Target fee	52.216-10
	Definition:	Task order	2.101

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Task order contract	16.501-1
		Tax credit.	32.607
	Other Federal	tax exemptions.	29.203
	State and local	tax exemptions.	29.305
	Resolving	tax problems.	29.101
	Definition:	Tax, and Taxes	52.229-6
	North Carolina State and Local Sales and Use	Tax.	52.229-2
	Federal Excise	Taxes	29.2
	Federal, State, and Local	Taxes (Noncompetitive Contract).	52.229-4
		Taxes (SF's 1094, 1094-A).	53.229
	Application of State and local	taxes to Government contractors and subcontractors.	29.303
	Application of State and local	taxes to the Government.	29.302
		Taxes.	Part 29 31.205-41
	Federal, State, and Local	Taxes.	52.229-3
	State and Local	Taxes.	29.3 52.229-1
		Taxes—Contracts Performed in U.S. Possessions or Puerto Rico.	52.229-5
		Taxes—Cost-Reimbursement Contracts with Foreign Governments.	52.229-9
		Taxes—Fixed-Price Contracts with Foreign Governments.	52.229-7
		Taxes—Foreign Cost-Reimbursement Contracts.	52.229-8
		Taxes—Foreign Fixed-Price Contracts.	52.229-6
		Taxpayer identification information.	4.203
	Definition:	Taxpayer Identification Number (TIN)	2.101 52.204-3(a)
	Administrative Matters:	Taxpayer Identification Number Information	4.9
		Taxpayer Identification.	52.204-3
	Transportation Documentation and Audit Regulation	TDA.	47.103
	Contractor Qualifications: Contractor	Team Arrangements	9.6
	Foreign License and	Technical Assistance Agreements	27.6
	Definition:	Technical data	27.401 52.227-14 52.227-20
		Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	52.227-21

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Rights to	technical data in successful proposals.	27.407
	Acquisition of Commercial Items:	Technical data.	12.211
	Contractor Qualifications: Providing systems engineering and	technical direction.	9.505-1
	Late Submissions, Modifications, Revisions, and Withdrawals of	Technical Proposals under Two-Step Sealed Bidding.	52.214-23
	Multiple	Technical Proposals.	52.214-24
	Research and Development Contracting: Scientific and	technical reports.	35.010
	Trade, business,	technical, and professional activity costs.	31.205-43
	Sealed Bidding:	Telegraphic bids.	14.202-2 52.214-13
		Telegraphic notice.	49.601-1
	Government use of private sector	temporaries.	37.112
	Availability of	term contracts and basic ordering agreements for transportation or for transportation-related services.	47.205
	Loan guarantees for	terminated contracts.	32.305
	Additional Principles for Cost-Reimbursement Contracts	Terminated for Convenience	49.3
	Additional Principles for Fixed-Price Contracts	Terminated for Convenience	49.2
	Settlement of	terminated incentive contracts.	49.115
	Definition:	Terminated portion of the contract	49.001
		Termination (Cost-Reimbursement).	52.249-6
		Termination (Personal Services).	52.249-12
		Termination case file.	49.105-3
	Other	termination clauses.	49.505
	Definition: Contracting officer/	Termination contracting officer (TCO)	2.101
		Termination costs.	31.205-42
	Definition:	Termination for convenience	17.103
		Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	52.249-3
		Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	52.249-5
		Termination for Convenience of the Government (Fixed-Price) (Short Form).	52.249-1
		Termination for Convenience of the Government (Fixed-Price).	52.249-2
	Federal Supply Schedules:	Termination for convenience.	8.405-6
	Effect of	termination for default.	49.402-2
	Procedure in lieu of	termination for default.	49.402-4
	Federal Supply Schedules:	Termination for Default.	8.405-5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Termination inventory	45.601 49.001
	Definition:	Termination liability	41.101
		Termination Liability.	52.241-10
	Contracting Officer: Selection, appointment, and	termination of appointment.	1.603
	Suspension of payments,	termination of contract, and debarment and suspension actions.	23.506
		Termination of contracts.	Part 49 53.249
		Termination of cost-reimbursement contracts for default.	49.403
	Definition:	Termination of employment gain or loss	31.001
		Termination of Work (Consolidated Facilities or Facilities Acquisition).	52.249-11
	Inventories upon	termination or completion.	45.508-1
		Termination settlement proposal forms.	49.602-1
		Termination status reports.	49.105-1
	Duties of prime contractor after receipt of notice of	termination.	49.104
	Notice of	termination.	49.102
	Acquisition of Commercial Items:	Termination.	12.403
	Career Development, Contracting Authority, and Responsibilities:	Termination.	1.603-4
	Contracting Officer Appointment:	Termination.	1.603-4
	Contract	Termination—Debarment.	52.222-12
	Contract	terminations.	22.406-11
	Definitions of Words and	Terms	Part 2
	Unique Requirements Regarding	Terms and Conditions for Commercial Items	12.4
	Change in Rates or	Terms and Conditions of Service for Regulated Services.	52.241-7
	Change in Rates or	Terms and Conditions of Service for Unregulated Services.	52.241-8
	Contract	Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.	52.212-5
	Contract	Terms and Conditions—Commercial Items.	52.212-4
		Terms for Financing of Purchases of Commercial Items.	52.232-29
	Special	Test Equipment.	52.245-18
	Definition:	Testing	46.101
	Describing Agency Needs:	Testing	11.8
	First Article	Testing and Approval	9.3
		Testing and qualification.	34.103

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	First Article Testing and Approval:	Testing performed by the contractor.	9.308-1
	First Article Testing and Approval:	Testing performed by the Government.	9.308-2
		Testing, Qualification, and Use of Industrial Resources Developed Under Title III, Defense Production Act	34.1
		Text of Provisions and Clauses	52.2
	Definition:	Third party draft	13.001
	Actions At or Below the Micro-Purchase	Threshold	13.2
	Definition:	Time	52.215-1
		Time Extensions.	52.211-13
	Evaluation of Options Exercised at	Time of Contract Award.	52.217-4
		Time of Delivery.	52.211-8 52.211-9
	Duration of contract and	time of performance.	47.207-2
		Time-and-material and labor-hour contracts.	46.306
	Inspection—	Time-and-Material and Labor-Hour.	52.246-6
	Government Property (Cost-Reimbursement,	Time-and-Material, or Labor-Hour Contracts).	52.245-5
	Payments under	Time-and-Materials and Labor-Hour Contracts.	52.232-7
		Time-and-materials contracts.	16.601
	Changes—	Time-and-Materials or Labor-Hours.	52.243-3
		Time-and-Materials, Labor-Hour, and Letter Contracts	16.6
	Service Contract Act of 1965, As Amended: Response to	timely submission of Notice—no collective bargaining agreement.	22.1012-2
	Service Contract Act of 1965, As Amended: Response to	timely submission of Notice—with collective bargaining agreement.	22.1012-3
	Definition:	Title III industrial resource	52.234-1
	Definition:	Title III project contractor	52.234-1
	Application of Government	title terms.	32.503-15
	Transfer of	Title to the Facilities.	52.245-15
	Protection of Government	title.	32.503-14
	Research and Development Contracting: Government property and	title.	35.014
		Title.	32.1009 51.106
	Administrative limitations, variations,	tolerances, and exemptions.	22.1003-4
	Variations,	tolerances, and exemptions.	22.304
	Special	Tooling.	52.245-17
		Toxic Chemical Release Reporting.	23.9 52.223-14

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Certification of	Toxic Chemical Release Reporting.	52.223-13
	Definition:	Toxic chemicals	23.904
		Trade Agreements Act/Caribbean Basin Trade Initiative/NAFTA.	25.504-2
	Agreement on	Trade in Civil Aircraft.	25.407
		Trade Sanctions	25.6
		Trade, business, technical, and professional activity costs.	31.205-43
	Contracting by Negotiation:	Tradeoff process.	15.101-1
		Traffic and Transportation Management	42.14
	Definition:	Trainee	22.401
	Apprentices and	trainees.	22.406-4 52.222-9
		Training and education costs.	31.205-44
		Transfer of title and risk of loss.	46.505
		Transfer of Title to the Facilities.	52.245-15
		Transit arrangements.	47.305-13 52.247-56
	Stopping in	Transit for Partial Unloading.	52.247-19
	Transportation	Transit Privilege Credits.	52.247-57
	Inconsistency between English Version and	Translation of Contract.	52.225-14
	Synopses of Proposed Contract Actions: Preparation and Synopses of Contract Awards:	transmittal of synopses.	5.207 5.302
		Transportation	Part 47
		Transportation (U.S. Government Bill of Lading).	53.247
		Transportation assistance.	47.105
	Submission of Commercial	Transportation Bills to the General Services Administration for Audit.	52.247-67
	Payments under	Transportation Contracts and Transportation-Related Services Contracts.	52.232-4
		Transportation contracts.	46.314
		Transportation cost determinations.	47.306-1
	Lowest overall	transportation costs.	47.306-2
		Transportation costs.	31.205-45
	No Evaluation of	Transportation Costs.	52.247-50
		Transportation Documentation and Audit Regulation (TDA).	47.103
		Transportation factors in the evaluation of offers.	47.306
	Solicitation provisions, contract clauses, and	transportation factors.	47.305

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Transportation in Supply Contracts	47.3
		Transportation insurance.	47.102
	Traffic and	Transportation Management	42.14
	Participation of	transportation officers.	47.301-2
	Contracts for	Transportation or for Transportation-Related Services	47.2
	Availability of term contracts and basic ordering agreements for	transportation or for transportation-related services.	47.205
	Contract clauses for insurance of	transportation or transportation-related services.	28.313
		Transportation term contracts.	47.203
		Transportation Transit Privilege Credits.	52.247-57
	Mode of	transportation.	47.305-14
	Inspection of	Transportation.	52.246-14
	Clearance and Documentation Requirements Shipments to DOD Air or Water Terminal	Transhipment Points.	52.247-52
		Travel costs.	31.205-46
	Materials Management Acquisition Regulations System: Deviations pertaining to	treaties and executive agreements.	1.405
		Treatment of violations.	3.204
	F.o.b. Origin—Carload and	Truckload Shipments.	52.247-59
	Definition:	Two-phase design-build selection procedures	36.102
		Two-Phase Design-Build Selection Procedures	36.3
	Use of	two-phase design-build selection procedures.	36.301
		Two-Step Sealed Bidding.	14.5 52.214-23 52.214-25
		Types of contract adjustment.	50.302
		Types of contract quality requirements.	46.202
		Types of contracts.	Part 16 53.216
	Definition:	U.S.-flag air carrier	47.401 52.247-63
	Availability and unavailability of	U.S.-Flag Air Carrier Service.	47.403-1
	Air Transportation by	U.S.—Flag Carriers	47.4
	Preference for Privately Owned	U.S.-Flag Commercial Vessels.	52.247-64
	Definition:	U.S.-flag vessel	47.501
	Ocean Transportation by	U.S.—Flag Vessels	47.5

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	U.S.-made end product	25.003 52.225-5
	Definition:	Unallowable cost	2.101
	Accounting for	unallowable costs.	31.201-6
	Penalties for	Unallowable Costs.	52.242-3
	Definition:	Unauthorized commitment	1.602-3(a)
	Contracting Authority: Ratification of	unauthorized commitments.	1.602-3
	Sealed Bidding:	Unclassified bids.	14.402-1
	Sealed Bidding: Award of	unclassified contracts.	14.409-1
	Definition:	Uncompensated overtime	52.237-10
	Definition:	Uncompensated overtime rate	52.237-10
	Contractor Responsibility for Returning	Undelivered Freight.	52.247-16
	Definition:	Unfair trade practices	9.403
	Contracting by Negotiation: Table 15-1—	Uniform Contract Format	15.204-1
	Sealed Bidding: Contracting by Negotiation:	Uniform contract format.	14.201-1 15.204-1
	Contracting by Negotiation: Order of Precedence—	Uniform Contract Format.	52.215-8
	Definition:	Unique and innovative concept	2.101
		Unique Requirements Regarding Terms and Conditions for Commercial Items	12.4
	Definition:	Unit	48.001 52.248-1
	Definition:	United States	2.101 22.801 22.1001 22.1301 25.003 47.401 52.219-23 52.225-1 52.225-3 52.225-5 52.225-9 52.225-11 52.247-63
	Air transport agreements between the	United States and foreign governments.	47.403-2
	Destination	Unknown.	52.247-49

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Definition:	Unlimited rights	27.401 52.227-14 52.227-17 52.227-20
	Progress Payments Based on Costs: Maximum	unliquidated amount.	32.503-12
	Contractor Responsibility for Loading and	Unloading.	52.247-15
	Stopping in Transit for Partial	Unloading.	52.247-19
	Change in Rates or Terms and Conditions of Service for	Unregulated Services.	52.241-8
	Definition:	Unsettled contract change	49.001
	Definition:	Unsolicited proposal	2.101
	Definition:	Unsolicited proposal	15.601
	Criteria for acceptance and negotiation of an	unsolicited proposal.	15.607
		Unsolicited Proposals	15.6
	Content of	unsolicited proposals.	15.605
		Unsolicited proposed revisions.	1.502
	Contracting by Negotiation: Notifications to	unsuccessful offerors.	15.503
	Other Than Full and Open Competition:	Unusual and compelling urgency.	6.302-2
	Definition:	Unusual contract financing	32.001
	Rental—	Use and Charges clause.	45.403
		Use and Charges.	52.245-9
	Construction Contracting:	Use and Possession Prior to Completion.	52.236-11
	Publicizing Contract Actions:	Use of advertising agencies.	5.504
	Selecting and Developing Requirements Documents:	Use of brand name or equal purchase descriptions.	11.104
	Contracting by Negotiation: Limited	use of data.	15.609
		Use of foreign currency.	25.1002
	Requirements for	use of forms.	53.101
		Use of Government Facilities.	52.245-14
		Use of Government property.	45.509-2
		Use of Government Sources by Contractors	Part 51
	Contractor	use of Government supply sources (OF 347).	53.251
	Testing, Qualification, and	Use of Industrial Resources Developed Under Title III, Defense Production Act	34.1
	Required Sources of Supplies and Services:	Use of other Government supply sources.	8.002
		Use of Recovered Materials	23.4
		Use of two-phase design-build selection procedures.	36.301

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Availability and	Use of Utility Services.	52.236-14
		Using and Maintaining Requirements Documents	11.2
	Federal Supply Schedules:	Using schedules.	8.404
	Protection of Existing Vegetation, Structures, Equipment, Order of Precedence—	Utilities, and Improvements.	52.236-9
	Definition:	Utilities.	52.241-2
	Definition:	Utility distribution system	45.501
	Definition:	Utility service	41.101
	Formats for annual	utility service review.	41.702
	Acquiring	Utility Services	41.2
		Utility services contract form.	41.601
		Utility Services Provisions and Clauses.	52.241
	Availability and use of	utility services.	36.514 52.236-14
		Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	52.226-1
	Definition:	Value engineering	2.101
	Definition:	Value engineering	52.248-2
	Definition:	Value engineering change proposal (VECP)	2.101 52.248-1 52.248-3
	Definition:	Value engineering proposal	48.001 52.248-2
		Value Engineering.	Part 48 52.248-1
		Value Engineering—Architect-Engineer.	52.248-2
		Value Engineering—Construction.	52.248-3
	Definition:	Variance	31.001
		Variation in Estimated Quantity.	52.211-18
	Describing Agency Needs:	Variation in Quantity	11.7
	Administrative limitations,	variations, tolerances, and exemptions.	22.1003-4
		Variations, tolerances, and exemptions.	22.304
	Protection of Existing	Vegetation, Structures, Equipment, Utilities, and Improvements.	52.236-9
	Protection of Government Buildings, Equipment, and	Vegetation.	52.237-2
		Vehicle Lease Payments.	52.208-4
	Interagency Fleet Management System (IFMS)	Vehicles and Related Services.	52.251-2
	Contract clause for insurance of leased motor	vehicles.	28.312

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Vehicular and General Public Liability Insurance.	52.228-10
	F.a.s.	Vessel, Port of Shipment.	52.247-36
	F.o.b.	Vessel, Port of Shipment.	52.247-37
	Preference for Privately Owned U.S.-Flag Commercial	Vessels.	52.247-64
	Definition:	Veteran of the Vietnam era	52.222-35
	Definition:	Veteran-owned small business concern	2.101
	Special Disabled	Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans	22.13
	Employment Reports on Special Disabled	Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-37
	Equal Opportunity for Special Disabled	Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.	52.222-35
	Compliance with	Veterans' Employment Reporting Requirements.	52.222-38
	Special Disabled Veterans, Veterans of the	Vietnam Era, and Other Eligible Veterans	22.13
	Reports of Suspected Antitrust	Violations	3.3
	Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor:	Violations and remedies.	22.1504
	Misrepresentations or	violations of the Covenant Against Contingent Fees.	3.405
	Reporting suspected	violations of the Gratuities clause.	3.203
		Violations or possible violations.	3.104-7
	Processing suspected	violations.	3.806
	Reporting suspected antitrust	violations.	3.303
	Treatment of	violations.	3.204
	Definition:	Virgin material	2.101 52.211-5
	Notification of	Visa Denial.	52.222-29
		Voiding and Rescinding Contracts	3.7
		Volume movements within the continental United States.	42.1402
		Voluntary changes.	30.602-3
	Discontinuance of	vouchers.	49.302
	Submission of	vouchers.	49.304-3
	Definition:	Wage and Hour Division	22.1001
	Regional jurisdictions of the Department of Labor,	Wage and Hour Division.	22.609
	Definition:	Wage determination	22.1001
		Wage determination appeals.	22.404-11
	Notification of improper	wage determination before award.	22.404-8
	Award of contract without required	wage determination.	22.404-9
	Late receipt or nonreceipt of	wage determination.	22.1012

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Review of	wage determination.	22.1013
	Posting	wage determinations and notice.	22.404-10
		Wage determinations based on collective bargaining agreements.	22.1002-3
		Wage determinations based on prevailing rates.	22.1002-2
	Correction of	wage determinations containing clerical errors.	22.404-7
	Davis-Bacon Act	wage determinations.	22.404
	Expiration of project	wage determinations.	22.404-5
	Modifications of	wage determinations.	22.404-6
	Procedures for requesting	wage determinations.	22.404-3
	Solicitations issued without	wage determinations.	22.404-4
	Types of	wage determinations.	22.404-1
	Definition:	Wages	22.401
		Wages, fringe benefits, and overtime.	22.406-2
		Waiver of Buy American Act for Civil Aircraft and Related Articles.	52.225-7
	Service Contracts:	Waiver of cost allowability limitations.	37.113-1
		Waiver of Facilities Capital Cost of Money.	52.215-17
		Waiver of Indemnity.	52.227-5
		Waiver of Limitation on Severance Payments to Foreign Nationals.	52.237-9
	Additional Foreign Acquisition Regulations:	Waiver of right to examination of records.	25.1001
		Waiver of screening requirements.	45.608-6
		Waiver of the penalty.	42.709-5
		Waiver.	9.503 30.201-5
	Federal Supply Schedules: Requests for	waivers.	8.404-3
	Employment of Workers with Disabilities:	Waivers.	22.1403
	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans:	Waivers.	22.1305
		Walsh-Healey Public Contracts Act.	22.6 52.222-20
	Ex Dock, Pier, or	Warehouse, Port of Importation.	52.247-40
	Workers' Compensation and	War-Hazard Insurance Overseas.	52.228-4
		Warranties of commercial items.	46.709
		Warranties of data.	46.708
	Authority for use of	warranties.	46.704
	Criteria for use of	warranties.	46.703

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
	Pricing aspects of fixed-price incentive contract	warranties.	46.707
		Warranties.	12.404 46.7
	Definition:	Warranty	2.101
	Service and	warranty costs.	31.205-39
		Warranty of Construction.	52.246-21
		Warranty of Services.	52.246-20
		Warranty of Supplies of a Complex Nature.	52.246-18
		Warranty of Supplies of a Noncomplex Nature.	52.246-17
		Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	52.246-19
		Warranty terms and conditions.	46.706
	Definition:	Waste reduction	2.101 52.223-10
		Waste Reduction Program.	52.223-10
	Definition:	Weakness	15.001
	Definition:	Weighted average cost	31.001
	Agreed	Weight—General Freight.	52.247-9
	Net	Weight—General Freight.	52.247-10
	Net	Weight—Household Goods or Office Furniture.	52.247-11
	Estimated Quantities or	Weights for Evaluation of Offers.	52.247-20
	Estimated	Weights or Quantities Not Guaranteed.	52.247-8
	Determination of	weights.	47.207-4
		Whistleblower Protections for Contractor Employees	3.9
	Modification or	withdrawal of bids.	14.303
	Sealed Bidding: Submission, modification, and	withdrawal of bids.	14.304
	Submission, modification, revision, and	withdrawal of proposals.	15.208
	Late Submissions, Modifications, and	Withdrawals of Bids.	52.214-7
	Late Submissions, Modifications, Revisions, and	Withdrawals of Technical Proposals under Two-Step Sealed Bidding.	52.214-23
		Withdrawals.	45.606-4
	Granting, withholding, or	withdrawing approval.	44.305
		Withdrawing or modifying small business set-asides.	19.506
		Withholding and setoff.	32.612
	Bonds and Other Financial Protections:	Withholding contract payments.	28.106-7

INDEX

MMAR Subjects:	Context Preceding the Keyword	Keyword, and Context Following the Keyword	MMAR Reference
		Withholding from or suspension of contract payments.	22.406-9
		Withholding of contract payments.	22.1022
		Withholding of Funds.	52.222-7
	Technical Data Declaration, Revision, and	Withholding of Payment—Major Systems.	52.227-21
	Limitation on	Withholding of Payments.	52.232-9
		Withholding or withdrawing approval.	44.305-3
	Granting,	withholding, or withdrawing approval.	44.305
		Women-Owned Business (Other Than Small Business).	52.204-5
	Definition:	Women-owned business concern	52.204-5
	Definition:	Women-owned small business concern	2.101
	Definition:	Women-owned small business concern	52.212-3 52.219-1
	Definitions of	Words and Terms	Part 2
	Definition:	Work	52.246-12
	Insurance—	Work on a Government Installation.	52.228-5
		Work Oversight in Architect-Engineer Contracts.	52.236-24
		Work Oversight in Cost-Reimbursement Construction Contracts.	52.236-18
	Research and Development Contracting: Performance-Based Contracting:	Work statement.	35.005 37.602-1
	Preparing specifications or	work statements.	9.505-2
	Removal of items from contractors' facilities affected by	work stoppages.	22.101-4
	Government Delay of	Work.	52.242-17
	Organization and Direction of the	Work.	52.236-19
	Suspension of	Work.	52.242-14
		Workers' Compensation and War-Hazard Insurance Overseas.	52.228-4
		Workers' Compensation Insurance (Defense Base Act).	52.228-3
	Employment of	Workers with Disabilities	22.14
	Affirmative Action for	Workers with Disabilities.	52.222-36
	Definition:	Work-in-process	45.501
	Material and	workmanship.	36.505 52.236-5
	Definition:	Writing or written	2.101
	Contents of	written acquisition plans.	7.105
	Acquisition of Information Technology:	Year 2000 compliance.	39.106
	Definition:	Year 2000 compliant	39.002

